2639.

SUPREME COURT OF THE UNITED STATES.

No. 258.

THE UNITED STATES, APPELLANTS,

vs.

ELLEN E. WHITE, ADMINISTRATRIX OF CHARLES WHITE, DECEASED.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Contents of transcript	1	1
Petition	5	3
Deposition of L. A. D. Ortega	7	4
" Wm. A. Richardson	12	5
" J. B. Alvarado	18	7
" M. G. Vallejo	22	9
" J. P. Leese	26	11
" J. B. Alvarado	29	12
" Jose de la Rosa	31	13
" John Martin	36	15
Order of revival	45	18
Doc. H. H. No. 1, annexed to deposition of Ortega	46	8
"B. P. L." Exhibit to deposition of J. B. Alvarado	46	18
Map	47	19
Translation of grant	48	20
Deed—Ortega to Bronellet	51	21
Deed 2—White	53	22
Conveyance—Ortega to White	56	23
Affidavit and motion of the United States law agent	58	24
Opinion of the board, delivered by Com'r R. A. Thompson	60	25
Decree of confirmation	63	27
Order	64	27
Notice of appeal	66	28
Notice	67	28

GIDEON PRINT.

	Original.	Print.
Deposition of Jose Ramon Mesa	68	29
" Francisca Miranda	74	31
" Jose S. Berreyesa	79	33
Certified copy of expediente No. 397	85	36
Map	89	38
Deposition of Joel P. Walker	92	39
" Michael L. Acolti	110	46
" Jas. B. Hine	119	50
" Carlos Patton	122	51
Petition for review	126	53
Answer	127	53
Stipulation and order	128	54
Stipulation	129	54
Translation of expediente of Juan Miranda	130	55
Translation of expediente of J. N. Padilla	134	57
Certified copy of grant to B. Boyorguez	138	59
Translation of grant to B. Boyorguez	141	61
Deposition of R. C. Hopkins	143	62
" P. T. Sherrebak	155	68
" G. H. Nye	157	69
Copy of order dismissing Miranda title	160	70
Testimony of R. C. Hopkins	162	71
Certified copy of deposition of Jos. L. Folsom	163	72
Map	171	76
Copy of original grant to M. G. Vallejo for the Petaluma ranch	173	77
Translation of grant for Petaluma ranch	177	79
Opinion of Honorable Judge McAllister	181	80
Decree	207	92
Order granting appeal	209	93
Clerk's certificate	210	94

Transcript of the proceedings in case No. 558, The United States vs. Ellen E. White, adm'x of Charles White, dec'd, for the place named San Antonio.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this seventh day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles White, for the place named San Antonio, was presented, and ordered to be filed and docketed with No. 558, and is as follows, to wit:

(Vide page 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *March 25th*, 1853.

In case No. 558, Charles White, for the place named "San Antonio," the deposition of "Leonidio Antonio Duque de Ortega," a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H H, Nos. 1 and 2, annexed thereto, was filed.

(Vide page 7 of this Transcript.)

SAN FRANCISCO, *Aug. 16th*, 1853.

In the same case the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(Vide page 10 of this Transcript.)

SAN FRANCISCO, *November 14th*, 1853.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 14 of this Transcript.)

SAN FRANCISCO, *October* 23*d*, 1854.

In the same case the depositions of Jacob P. Leese and Mariano G. Vallejo, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed.

(Vide pages 17 and 21 of this Transcript.)

SAN FRANCISCO, *December* 7*th*, 1854.

In the same case the depositions of José de la Rosa and Juan B. Alvarado, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, *was* filed.

(Vide pages 23 and 25 of this Transcript.

SAN FRANCISCO, *December* 12*th*, 1854.

Case No. 558 was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *January* 2*d*, 1855.

Case No. 558 was submitted on briefs, and taken under advisement by the board.

In the same case, on motion of the counsel for the claimant, the following order was made, to wit:

"It is ordered by the board that this claim be revived in the name of Ellen E. White, *administrator* of Chas. White, deceased."

SAN FRANCISCO, *January* 9*th*, 1855.

In the same case the deposition of John Martin, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed, in accordance with the stipulation annexed thereto.

(Vide page 29 of this Transcript.)

SAN FRANCISCO, *April* 24*th*, 1855.

In the same case the U. S. law agent filed the following affidavit and motion, to wit:

(Vide page 47 of this Transcript.)

SAN FRANCISCO, *May* 27*th*, 1855.

In the same case Commissioner R. Aug. Thompson delivered the decision of the board, upon the motion of the U. S. law agent, on the 24th April, 1855, overruling the same.

SAN FRANCISCO, *June 26th*, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

(Vide page 49 of this Transcript.)

And the following order was made, to wit:

(Vide page 53 of this Transcript.)

Petition.

To the honorable the Board of U. S. Land Commissioners appointed to settle private land claims in California.

The petition of Charles White respectfully represents: That on or about the tenth day of August, A. D. 1840, Juan B. Alvarado, then gov. of California, in the name of the Mexican nation, by virtue of the laws then in force, the customs and usages of the country affecting grants of land in California, granted in full property, unto Antonio Ortega, the tract of land and rancho known by the name of "Arroyo de San Antonio," bounded on the north by the oak grove of the Misena, on the east by the estero of Petaluma, and on the west by the laguna of San Antonio, on the south by the rancho of Caimlo, as described more fully in the papers and maps relating to said grant of land, the originals being in the hands of your petitioner ready to be produced and proved, and copies of the same are herewith filed as part of this petition.

And your petitioner further shows, that about or during the month of November, A. D. 1852, the said Antonio Ortega sold and conveyed unto your petitioner all of the above described rancho and lands, by good and sufficient deed, duly acknowledged and authenticated, the original being in the possession of your petitioner ready to be produced and proved, and a copy of the same your petitioner prays leave to file as a part of this petition, so soon as the said copy can be prepared.

And your petitioner further shows, that the said Antonio Ortega occupied the said lands and rancho from the date of said grant until within a recent time past, either by living upon the lands himself, or causing his employees or servants to live upon said land, and attend upon his stock, and cultivate the said lands.

And your petitioner further shows, that he has been informed that one Thomas B. Valentine has filed a pretended claim, before your honorable board, to the said lands, or to some part or portion thereof, but of its nature or value your petitioner is ignorant.

And your petitioner, therefore, prays the careful investigation

of this, his claim, before any confirmation shall be made of any other pretended claim to said lands.

Respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Of Counsel for Cl'mt.

Filed in office February 7th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of L. A. D. de Ortega.

SAN FRANCISCO, *March 25th*, 1853.

On this day before Commissioner Hiland Hall came Leonido Antonio Duque de Ortega, a witness in behalf of the claimant, Charles White, petition No. 558, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Leonito Antonio Duque de Ortega; I reside in Contra Costa county, and my age is seventy-two years. A paper is shown me purporting to be a petition to governor for land, dated June 12th, 1840, with report of M. G. Vallejo and decree of Alvarado thereon, which paper is hereto attached and marked H H No. 1. The petition has my own genuine signature upon it. It was presented by me to Governor Alvarado, and the two signatures of Alvarado and that of M. G. Vallejo, upon the paper, are genuine. I saw the said Vallejo sign the paper, and am acquainted with the handwriting of Alvarado. After the making of the decree of Governor Alvarado, and during the same year, I went to Monterey and applied to Alvarado for a full and formal title, but it was during the recess of the departmental assembly, and I could not obtain it. I did not occupy the land in person, but my father-in-law, Juan Miranda, occupied it for me in the year 1840. Miranda occupied the land by placing his son there, who remained there six years, having a hut there, and he had fifty cows there. I applied to Governor Alvarado with the paper before mentioned, and presented a map, and then I went to Oregon, leaving the papers with the governor.

The map I presented is now produced and is hereto attached, and marked H H No. 2. I have been eighteen years in the military service of Mexico, and came here as a lieutenant and adjutant, and served six months as such in Sonoma. I have not had any other grant of land in California than that of the Arroyo de San Antonio, before mentioned.

In answer to questions by the associate law agent, the witness testified as follows:

My father-in-law occupied the land on my account for the whole six years, but never paid me anything whatever for the use of it. I think my father-in-law died in 1845; I went to Oregon in 1843, and was there four years, and he died the year before I returned. I do not know whether Juan Miranda obtained a grant of the land to himself or not. Teodoro Miranda, a son of Juan Miranda, was occupying the land when I returned from Oregon, the same that was occupying it when I went; he continued occupying the land from 1841 to 1848; I do not know who occupied the land after 1848; I claimed the land after I came back from Oregon; I went to Alvarado and got the papers for the purpose of establishing my claim. This was after the country had been taken by the Americans. I kept the papers about a year, and then delivered them to a French priest by the name of Bronillet; I made a present of the land to the priest, in pay for the education of my children for eight years. I never received judicial possession of the land. I have no interest in the success of this claim, or the want of it.

Question. Did your ever demand of Teodoro Miranda the possession of the land?

Answer. I did not; I went to his mother, who had the control, and demanded *of it her*. She told me the rancho belonged to her; that she had a paper from Murphy, and from Luso, the alcalde of Sonoma. I did nothing afterwards towards getting the occupancy of the land, but went to Alvarado and got the papers before mentioned.

LEONITIO ANTONIO DUQUE DE ORTEGA.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office March 25, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Wm. A. Richardson.

OFFICE OF THE COMMISSIONERS OF CALIFORNIA LAND CLAIMS,
San Francisco, Aug. 16, 1853.

CHARLES WHITE
vs.
UNITED STATES.

This day before Com'r Rob't A. Thompson came William A. Richardson, a witness in behalf of claimant, case No. 558, and after being duly sworn, deposed as follows:

Present, E. O. Crosby, esq., attorney for claimant, and Robert Grenhow, esq., ass't law agent.

Question 1st by attorney for claimant. What is your name, age and place of residence?

Answer. My name is William A. Richardson; my age fifty-eight years; I reside at Sancelito, Marin Co., California, and have resided in California thirty-one years.

Question 2d. Do you know the place called the "Arroyo de San Antonio;" if so, where is it situated and what are its boundaries?

Answer. I do; it is situated in Marin county, California; it issues from the laguna of San Antonio, *a* running in a northeasterly direction; it empties in the creek of Petaluma.

Question 3d. Do you know the ranch or tract of land called the Arroyo de San Antonio; and if so, what are its boundaries?

Answer. I do not know the exact boundaries. I know that the ranch house is situated near where the arroyo empties into Petaluma creek.

Question 4th. Look at the map marked H H No. 2, and annexed to the deposition of L. A. Duque de Ortega, taken in this case, and state whether or not it is a correct representation of the aforesaid ranch or tract of land?

Answer. The points of the compass and the course of the arroyo are not correctly laid down. The point intended for the north should be turned about sixty degrees east. With these exceptions, the map is generally correct, considering the time and circumstances when and under which it was made.

Question 5th. Do you know anything of the original grant of said land, and by whom and to whom it was granted? State all you know in relation to it.

Answer. It was granted to Antonio Ortega by Governor Alvarado in the year 1840.

Question 6. State what you know of its occupation by Ortega; when and in what manner he occupied it?

Answer. It was never occupied by Ortega in person; it was occupied by the family of Juan Miranda, by virtue of a contract between said Miranda and Ortega; but shortly afterwards all the family of Miranda left, except his son Theodore, who continued to occupy it when I was last there, now nearly three years ago. He went there within two months or less after Ortega got the grant.

Question 7th. At whose instance, and for whose benefit, did Miranda take possession of said rancho?

Answer. At the instance and for the benefit of Antonio Ortega.

Question 8. In what manner did he occupy it; what improvements did he make on it; and at what time did he make them?

Answer. He occupied it with horned cattle, horses, and mares, and by cultivation. He first built corrals, and afterwards a house.

Within about four months after he went on the land he built the corrals and house. He seeded a crop of wheat the fall after he went there and made a good crop. He also had a garden spot on the creek, in which he cultivated Indian corn, melons, and other vegetables.

Question 9. From whom did you understand that Miranda occupied the rancho for Ortega?

Answer. I understood it both from Ortega and Miranda; they both told me so.

Note.—Questions and answers in relation to map objected to by law agent.

Questions by Volney E. Howard, Esq., United States Law Agent.

Were you present when Governor Alvarado made the grant or concession spoken of?

Answer. I was not.

Question by same. Do you know when Ortega moved to Oregon and when he returned?

Answer. I do not recollect when he went to Oregon; he returned, I think, in 1846.

Question by same. Can you state about how many years he was absent.?

Answer. I think he was absent three or four years.

Question by same. How do you know that the boundaries of which you have spoken are the boundaries of the land claimed in this case?

Answer. By seeing the grant, and having it in my possession, and by living frequently at the house.

Question by same. Is this land within ten leagues of the sea-coast?

Answer. I think it is within about seven leagues of the coast.

Question by same. Who is now in possession of the land claimed in this case?

Answer. I do not know.

And further this deponent saith not.

WILLIAM A. RICHARDSON.

Sworn to and subscribed before me, this 16th day of August, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Aug. 16th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. B. Alvarado.

SAN FRANCISCO, *Nov. 14th*, 1853.

This day before Thompson Campbell came Juan B. Alvarado, a witness in behalf of claimant, Charles White, No. 558, who, after

being duly sworn, deposed as follows, his evidence being interpreted by the secretary:

Questions by the Attorney for Claimant.

1st question. What are your name, age, and place of residence?

Answer. My name is Juan B. Alvarado, my age is forty-three years, and I reside in Contra Costa county, California.

2d question. Look on the document now here shown to you, purporting to be a petition by Antonio Ortega to the governor for a grant of land called "San Antonio," and a marginal decree of the governor, a report of M. G. Vallejo, and a decree of concession, which is marked H H No. 1, and attached to the deposition of L. A. D. de Ortega, heretofore taken and filed in this case, and state whether the signatures of Antonio Ortega, M. G. Vallejo, and your own, appearing thereon, are the true and genuine signatures of said persons, and whether you are acquainted with their handwriting?

Answer. I have looked on the paper, and I recognise the signatures above mentioned as the true and genuine signatures of the persons named. That of "Alvarado," in two places thereon, is my own. I am acquainted with the handwriting of said Vallejo and Ortega. The body of the marginal decree on the first page, and the decree of concession on the second, were written by me.

3d question. What offices have you held in California under the Mexican government, and at what time did you hold such offices?

Answer. I have held several offices, but the most important was that of governor and political chief, which I held from the commencement of 1837 until the end of the year 1842.

4th question. State what was the usage and custom of the governors of California in granting lands to military officers, and what preference, if any, was given to them over other citizens?

Answer. I don't recollect of any instance where a military officer and a citizen claimed the same piece of land, but the custom established by law was to prefer the person having the most *mints* and services.

Question 5. When the party obtained a grant like the one in this case, went into possession, built a house, and occupied within a year, and another person during that occupancy obtained a grant of the same land by representing it vacant, what would be the effect of the last grant, under the usages and customs of California?

(This question objected to by the associate law agent.)

Answer. The second grant could not have any effect. In all cases the oldest title had the preference, unless there was a denouncement, in which case the matter would be tried as I have already stated in other cases.

6th question. In such cases, was there notice to the former claimant?

Answer. Yes, there was a notice served on the party; which notice consisted in sending the papers containing the denouncement to the other party, that he might appear.

7th question. If the former grantee built a house, inhabited it, and cultivated within a year, and subsequently rented it out to a tenant, without the knowledge of his landlord, applied to the governor, representing the land as vacant and unoccupied by any other person than the tenant, and obtained a grant for the land, what would be the effect of the second grant, under the usages and customs of California regulating the granting of lands?

(Associate law agent objects to this question as *irrevalent* to the present case.)

Answer. The original grantee is considered to be the proprietor, and the second grant could have no effect to *to* the prejudice of the first grantee; in such case the matter would be adjudicated according to justice.

JUAN B. ALVARADO.

Sworn to and subscribed before me this 14th day of November, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Nov. 14th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of M. G. Vallejo.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *October* 23*d*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Mariano G. Vallejo, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed as follows:

The U. S. associate law agent is present.

Questions by Mr. Howard for Claimant.

1st question. What is your name, age, and residence?

Answer. My name is Mariano G. Vallejo; my age 47 years; my residence Sonoma, California.

2d question. Are you acquainted with the rancho of "Arroyo de San Antonia;" if yea, where is it situated? And state what you know of its being granted to any one.

Answer. I am acquainted with said rancho; it is situated in

Sonoma county, south of Petaluma; it is the rancho which was granted to Antonio Ortega by Governor Alvarado; said Ortega applied to me, as director of colonization for the northern frontier, for permission to settle on the land; I granted the permission he asked.

3d question. State what you know of the occupation of said rancho.

Answer. It was, I think, about 1838 or 1839 that said Ortega applied to me for permission to settle there; and immediately after I gave that permission, he moved on to the land, taking with him his father-in-law, Juan Miranda, and his family; he built a house there and a corral, and stocked the place with horses and cattle; I furnished him with stock to stock the place, and he went on to cultivate a portion of the land; he after that obtained a grant from Governor Alvarado about 1840; Ortega, when he placed his father-in-law on the land, was an officer in the army, and was a portion of the time with his command, and went occasionally to his ranch.

4th question. What were your powers as director of colonization respecting the granting of lands?

Answer. I had the power to grant to such citizens as asked permission to settle upon the government lands preliminary to their obtaining a title from the governor.

Cross-examined by the U. S. Associate Law Agent.

1st question. Did you ever see the grant in this case?

Answer. I have seen it.

2d question. What description of house was it which Ortega built on said ranch?

Answer. A log house.

3d question. What kind of cultivation did you see on the place?

Answer. There were some 50 or 60 acres of land cultivated in corn, pumpkins, and all kinds of vegetables.

4th question. Under what law and from whom were your powers as director of colonization derived?

Answer. There was a special law creating the office, I think about the year 1834 or 1833—I am not certain which year; that law fixed the power and duties of that office.

5th question. Were you ever on said rancho after 1840; and if so, did you see any cultivation there then?

Answer. I was there subsequent to 1840, and saw the cultivation of the land the same as before, principally wheat and corn.

6th question. Was either Ortega or Miranda there on the land subsequent to 1840?

Answer. Yes. I saw them both there after 1840, and Miranda, I think, was still living there.

M. G. VALLEJO.

Subscribed and sworn to before me this 23d day of October, A. D. 1854.

PETER LOTT, *Com'r, &c.*

Filed in office Oct. 23d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. P. Leese.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *October 23d*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Jacob P. Leese, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed as follows.

The U. S. associate law agent is present.

Questions by Mr. Howard for Claimant.

1st question. What is your name, age, and residence?

Answer. My name is Jacob P. Leese; my age 45 years; my residence in Monterey, California.

2d question. Are you acquainted with the rancho de San Antonio? if yea, state what you know respecting its being granted to any one.

Answer. I am acquainted with said rancho, and about 1840 or 1845, while I was alcalde of Sonoma, Juan Miranda applied to me, as was customary, with his petition for said land; I decreed in his favor, as he was living on the land, and I understood it to be vacant.

3d question. On what information did you report or decree said land to be vacant?

Answer. Upon the allegation to that effect in said Miranda's petition; I had no other information on the subject, except I knew Miranda lived on the land.

4th question. Should you have reported it vacant if you had known that said Miranda was occupying the land for another person?

Answer. Of course I should not, if there was any dispute about; I should await an investigation till it was ascertained.

5th question. Were you acquainted with the usage and custom of the Mexican government in the granting of lands? if yea, state what would have been done, according to said usage, when a party obtained a grant of land and placed another person on the land to occupy it for him, (said grantee,) and that other person should then himself ask for a grant of the same land.

Answer. In such a case the alcalde would have reported that the land was not vacant, and that would have been my report in the case before us; but the fact of the former grant being concealed or contradicted by the petition, I was deceived, and if the grant was obtained from, through the deception practised upon, the alcalde, that grant would be fraudulently obtained, and would be void.

Cross-examined by the U. S. Associate Law Agent.

1st question. Was it usual for an alcalde to report upon the bare petition or assertion of an applicant for land without further inquiry?

Answer. It was the duty of the alcalde to ascertain as to the occupancy of the land to his satisfaction. In this case I knew that Miranda lived on the land, and supposed he occupied it as his own; I knew nothing of Ortega's grant at that time.

JACOB P. LEESE.

Sworn and subscribed to before me on this 23d day of October, A. D. 1854.

PETER LOTT,
Com'r, &c.

Filed in office October 23d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. B. Alvarado.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *Dec. 7th,* 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Juan B. Alvarado, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows.

The U. S. associate law agent is present.

Questions by Messrs. Crosby and Howard for Claimant.

1st question. What is your name, age, and residence.

Answer. My name is Juan B. Alvarado; my age 45 years; my residence Contra Costa county, California.

2d question. Look at the map filed in this case, marked "A. P. L.," and the document marked B. P. L., and both made exhibits in this deposition, and state whether they were ever placed in your

hands by Antonio Ortega for safe keeping; if yea, when, and how long?

Answer. In 1840 or 1841 said Ortega brought these two papers to me in Monterey, and left them in my hands, and I kept them for him till about 1848, and I gave them up to him; I think he wanted to use them for some purpose.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 7th day of December, A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office Dec. 7th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Jose de la Rosa.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *Dec. 7th*, 1854.

This day came before me, Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, José de la Rosa, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows.

The U. S. associate law agent is present.

Questions by Messrs. Crosby and Howard for claimant.

1st question. What is your name, age, and residence?

Answer. My name is José de la Rosa; my age 63 years; my residence in Sonoma, California.

2d question. State what you know, if anything, respecting an application made by Juan Miranda for a grant of land—the place called "San Antonio."

Answer. In 1844 Juan Miranda applied to me in Monterey to draw up a petition for him to the governor, Micheltorena, for the grant of the place called San Antonio. I wrote his petition for him, and he requested me to present it to the governor, which I did, and the governor postponed the making of the grant on account of his being occupied with other business. There was a grant written by one Charles A. Clark, in the secretary's office, but it was never signed on account of the civil disturbances, and the breaking out of the revolution about that time.

3d question. Look at the map filed in this case, marked on the

envelope "A. P. L.," exhibit to the deposition of José de la Rosa, Dec. 7th, 1854, and state all you know respecting it.

Answer. About the year 1839, Antonio Ortega applied to me in Sonoma to make a map for him of the place called San Antonio, as he wished to apply to Gen. Vallejo for leave to occupy said land; I accordingly made the map for him, and this is the identical map I then made—and according to what I had seen of the land, this is a correct representation of it. I think it contains four sitios de ganado mayor. And afterwards, in 1840, said Ortega got me to write his petition for the grant of said land, directed to Governor Alvarado, and this same map was presented to the governor with said petition. Ortega obtained the permission from Vallejo in 1839 to occupy said land, and he did occupy it, and was in the occupation of it at the time that the petition was presented to Alvarado for the grant; Governor Alvarado granted the land—I saw the grant a short time after the petition was presented. I saw said grant in the house of Ortega, on the ranch of San Antonio.

Cross-examined by U. S. Associate Law Agent.

1st question. Did Governor Micheltorena make any objection to granting the land in question to Miranda on the ground that it had before that time been granted to Ortega?

Answer. No, he made no such objection, but he never signed the title.

2d question. When did you see the title at Ortega's house?

Answer. It was in 1840, the same year that he petitioned for it—I cannot remember the exact time of the year.

3d question. Where did said Ortega live after 1840?

Answer. Ortega went to Oregon and left his family and Juan Miranda on the land claimed in this case, in order that he (Ortega) might not lose his right to said land.

4th question. Did you see said Ortega's family on said rancho? If yea, when?

Answer. Yes, I saw the family there very often; they always lived there, and I have seen them there for years up to within the last 3 or 4 years.

5th question. Did said family of Ortega ever go to Oregon, and when did he return from Oregon?

Answer. The family never went to Oregon; Ortega went alone, and left his family on the rancho. He came back after the Americans came to this country. I think it was in 1847.

6th question. What is the shape of said rancho of San Antonio?

Answer. The map which has been exhibited here is a correct figure of the land; the lines are irregular; it may be about 1½ league wide, and more than 1½ league in length.

JOSÉ DE LA ROSA.

Subscribed and sworn to before me, on this 7th day of December, A. D. 1854.

PETER LOTT.
Commissioner.

With the consent of the U. S. associate law agent, the following interrogatory and answer on the part of the claimant are added; same witness.

Question by Mr. Crosby. Look at the document filed in this case marked "C. P. L." as an exhibit to this deposition, and state whether you signed said instrument as a subscribing witness; if yea, at whose request, and whether you saw it executed?

Answer. Yes, I signed my name here as a witness; I was present at the execution of said deed, and signed it at the request of Antonio Ortega, and I saw him execute said deed at the house of the mission of Sonoma about the time said deed bears date.

JOSÉ DE LA ROSA.

Subscribed and sworn to before me, on this 7th day of December, A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office Dec. 7th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

UNITED STATES LAND COMMISSION,
San Francisco, Jan'y 9th, 1855.

Deposition of J. Martin.

On this day before commissioner Alpheus Felch came John Martin, a witness on behalf of the United States in case No. 558, wherein Charles White is claimant, who, after being duly sworn, deposes as follows:

Questions on the part of the Government.

1st question. Please state your name, age, and place of residence.

Answer. My name is John Martin, my age sixty-seven years, and I reside in Marin county, California; my place is called Novato.

2d question. Do you know the rancho called Arroyo de San Antonio? If yea, how long have you known it?

Answer. I have known that place from 1830 to the present time.

In 1832 I had possession of it, from Gen. Vittoria, then governor and general of the country.

3d question. How long did you hold possession? Under what authority did you take it; and in what manner did you occupy the place?

Answer. I held it under a paper from General Vittoria, but my writing from him was only a loan of the land, and I delivered up the paper to Juan Miranda, in order for him to get a title from the government; I had possession from 1832, until 1837.

I kept my animals on the place. My first establishment was at the place called Botoque, which was on said place. I cultivated land on the place near where I lived. I built a house there in 1832, and lived on it and cultivated the land until 1837. I then took the house away and asked for a title to the land where I now live, called Novato; I got a title of it and then moved my house on to it.

(Mr. Howard, for claimant, objects to this question and answer.)

4th question. What became of the papers that you had from Vittoria?

Answer. I burned them. They did not belong to any record. It was in 1837 I burned them. I did it so that Juan Miranda might get his title for the land clear of all other claim to it.

5th question. Had Juan Miranda any authority for receiving possession from you at the time you delivered possession to him?

Answer. He had authority from General Vallejo, commandante of the frontier, to take possession of the land, until he could get a grant from the government.

(Mr. Howard objects to the question and answer.)

6th question. What offices did General Vallejo exercise at that time?

Answer. Commandante general and director of the frontier.

7th question. In what manner did Miranda take possession of said rancho?

Answer. By putting his sons to live on it, with his animals and mares.

8th question. How did his son occupy said rancho?

Answer. He lived on it and cultivated the land, and kept his cattle there. He built a house of sticks, in which he lived. There was no way of building any other house in those times.

9th question. How long did he live there?

Answer. He lived there some time before he was married. He then married and lived on the same place with his family. He lived there until it was sold to Mr. Valentine. He had some cattle there; I suppose about forty or fifty head.

10th question. What position did Juan Miranda hold?

Answer. He was steward of the Mission at Sonoma, under father Valentine, from 1830 up to 1837.

11th question. Did Miranda hold any other rancho besides this?

Answer. He did not.

12th question. Did you know Antonio Ortega?

Answer. I knew him since he came with the colony under Heifar, from Mexico, about 1834 or 1835.

13th question. When and where did they settle?

Answer. They settled near the Blue mountain, at the other side of Napa creek. They settled there in 1834 or 1835.

14th question. How long did Ortega remain there?

Answer. About one year. He then went to the mission at Sonoma, and acted as keeper of the keys.

15th question. Had you delivered the possession of the rancho to Miranda before Ortega went to *to* the mission?

Answer. I did not deliver it to him until afterwards.

16th question. When did Ortega marry, and to whom?

Answer. He married Mary Francisca Miranda, daughter of Juan Miranda. He was married in 1838 at the mission Dolores.

17th question. Had you delivered possession of the rancho to Miranda before Ortega was married?

Answer. I delivered it before he was married, about a year or two years before.

18th question. Where did Ortega reside after he was married?

Answer. In the mission at Sonoma; I never knew him to reside at any other place until he went to the Columbia river, which I think was in 1840. He then parted with his wife, and left her at the mission. He parted from her to the present day, and has never lived with her since.

19th question. How long did he remain absent?

Answer. About four or five years. He returned about the time the American flag was raised.

20th question. On whose account did Miranda take possession of the rancho?

Answer. On his own account and that of his family, I suppose.

21st question. On whose account did Theodore Miranda hold possession of said rancho?

Answer. On account of his father, Juan Miranda.

22d question. Was the possession or title of *the* Miranda ever questioned prior to the American occupation of the country?

Answer. I cannot tell.

23d question. Did Miranda continue in possession?

Answer. He continued in possession until the sheriff's sale; I mean the sale to Mr. Valentine.

24th question. Whose title to the land was recognised by the neighborhood and the colindantes?

Answer. We do not know any other one than Juan Miranda; the colindantes did not know any other.

(Howard objects to this question and answer.)

25th question. By what name is the rancho known?

Answer. By the name of the rancho *is* San Antonio Brook.

Questions by Mr. Howard for Claimant.

1st question. When did you leave said rancho?

Answer. In 1837.

2d question. Where did Juan Miranda reside?

Answer. He resided at Sonoma, until about two or three years ago; he died at San Rafael, but was living there only a few months before his death; he died after the American war; he left a widow, and she died about two years ago at San Rafael; Teodoro lived on the rancho, and his mother was off and on the rancho with her children, but never lived there; Juan Miranda went sometimes to the rancho back and forward, but he never lived there; Theodore was the only one that lived constantly on the farm; Mariano was sometimes there, but was a wild boy.

his
JOHN ⋈ MARTIN.
mark.

Subscribed and sworn to before me, this ninth day of January, 1855.

ALPHEUS FELCH, *Commissioner.*

Filed in office Jan. 9, 1855.

(Signed) GEO. FISHER, *Sec'ry.*

Order of Revival.

U. S. LAND COMMISSION.

Charles White, Claimant.—"Arroyo de San Antonio."

On motion of claimant's counsel, it is ordered by the board that this case be revived in the name of Ellen E. White, administratrix of Charles White, dec'd.

Filed in office Jan. 2d, 1855.

(Signed) GEO. FISHER, *Sec'ry.*

Doc. H H No. 1, *annexed to Dep. of L. A. de Ortega, taken before Comm'r H. Hall.—B. P. L. exhibit to Depo. of Juan B. Alvarado, Dec. 7th,* 1854.

Ex'mo Sor. Gobernador:

Antonio Ortega, ciud'no Mejicano y cuecindado en Sonoma, frontera del norte; à S. E., con lo mas debida forma hajo presente q. descando dedicarme al interesante ramo de la agricultura y principaleria de ganado de todas especies como el quien de q. à la vez se ocupan todos los habitantes de esta frontera he de me recer de V. E. q. se sirva concederme conforme a sus facultades el terreno conocido con el nombre de el Arroyo de Sn. Antonio, colindando por el sur con el Rancho de Camilo, por el norte con el Roblar de la Miseria, por el este con el Estero de Petaluma y por el oeste con la laguna

de San Antonio, este terreno es baldio; no pertenece à la propriedad de individuo, corporacion ò pueblo.

Por tanto de la acreditada justificacion de Sr. E., espero resultado mas fovorable juro no ser de malicia y lo necessario dispensando el uso de papel comun pr. haveo de sello que corresponde.

Sonoma, Junio 12, de 1840.

ANTONIO ORTEGA.

MONTEREY, *Junio* 20, *de* 1846.

Informé el Sr. comd'te militar de la frontera de Sonoma si el interesado en este representacion tiene los requisitos necesarios pa. ser atendido en su solicitud si el terreno que pretende es baldio y si pertence à la propiedad de algun individuo corporacion ò pueblo con todo lo demas que esta conveniente informar.

Asi yo Juan B. Alvarado, gob'r del departm'to de las Californias, lo decretè mande y firmè.

ALVARADO.

SONOMA, *Julio* 30, *de* 1840.

De conformidad con el decreto que antecede del E. V., gobernador del departamento debo informar que el interesado en esta instancia tiene los requisitos para ser atendido en su solicitud y que el terreno que pretende no pertenece à propriedad particular ni corp'o.

M. G. VALLEJO.

MONTEREY, *Ag'o* 10, *de* 1840.

De conformidad con lo informado por el Sor. comand'te militar de la frontera de Sonoma, y en virtud de las facultades con que me hallo investido, concedo, a Dn. Antonio Ortega, el terreno solicitado en la intelligencia de que para expeditar el titulo respectivo y arreglar el espediente necessario por el cual se deven demarc'n los linderos y corre los tramites necessarios cebantaro el plano diseño prevenido por la ley el mismo que presentara oportunamente con este instancia lo que se le devuelve pa. q. le servia de resguardo durante los demas operaciones medidas.

ALVARADO.

Filed in office March 25th, 1853.

GEO. FISHER, *Sec'ry*.

[*Here follows map—original, page* 47.]

Translation of Grant.

Most Excellent Governor:

Antonio Ortega, a Mexican citizen and resident of Sonoma, frontier of the north, presents himself before your excellency in the best form he can, and says that, desiring to dedicate himself to that interesting branch, agriculture, and principally to the raising of cattle of all species, as are all the inhabitants of this frontier at present occupied, I have to beg your excellency will be pleased to grant me, in conformity with your faculties, the land named the Arroyo de San Antonio, bounded on the south with the rancho of Camilo; on the north with the oak grove of the Miseria; on the east with the estero of Petaluma, and on the west with the laguna of San Antonio. Said land is vacant; it does not belong to the property of any individual, corporation or pueblo.

For which, from the accredited justice of your excellency, I hope for the most favorable results, swearing it is not in malice, but what is necessary. Permitting the use of common paper, for want of corresponding sealed paper.

(Signed) ANTONIO ORTEGA.

Sonoma, June 12th, 1840.

Marginal Decree.

MONTEREY, *June 20th*, 1840.

The military commander of the frontier of Sonoma will inform me if the petitioner in this representation has the necessary requisites to be attended to in his petition; if the land which he claims is vacant, and if it belongs to the property of any individual, corporation or pueblo, with all the rest which you may believe is necessary to inform me.

Juan B. Alvarado, governor of the departments of the Californias, decrees and signs.

(Signed) ALVARADO.

SONOMA, *July 30th*, 1840.

In conformity with the foregoing decree of his excellency, the governor of this department, I must inform that the petitioner, in this instance, has the necessary requisites to be attended to in his petition, and the land which he claims does not belong to any individual, corporation or pueblo.

(Signed) M. G. VALLEJO.

MONTEREY, *August 10th*, 1840.

In conformity with the information given by the military commander of the frontier of Sonoma, and in virtue of the faculties

with which I am invested, I grant to Don Antonio Ortega the land petitioned for, with the understanding that, to expedite the respective title and to regulate the necessary documents by which he shall mark out the lines and perform those necessary acts, he shall make a map, as required by law, which he will present opportunely.

This decree shall be returned to him, that it may serve him as a security during the other operations indicated.

(Signed) ALVARADO.

Filed in office February 7, 1853.

(Signed) GEO. FISHER, *Sec'y*.

Deed.—Ortega to Bronellet.

This indenture, made and concluded this first day of March, in the year of our Lord one thousand eight hundred and forty-nine, between Antonio Ortega, of Sonoma, in the district of Sonoma, northern department of Upper California, of the one part, and John the Baptist Abraham Bronellet, of San Francisco, on the other part, witnesseth: That the said Antonio Ortega, for and in consideration of the sum of one dollar, well and truly paid at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath bargained, granted, sold, transferred and conveyed, and by these presents doth bargain, grant, sell, transfer and convey unto the said John the Baptist Abraham Bronillet, his heirs and assigns forever, all his right, title and interest of, in and to all that certain lot of land situated and being in the district aforesaid, and known and described as follows: The ground known as the Arroyo de San Antonio, *bound* on the south by the Rancho de Camilo; on the north by the oak grove of Miseria; on the east by the Estero de Petaluma, and on the west by the laguna of San Antonio, with the exception of one square league, which the said Ant'o Ortega reserves to himself, and boundaries of which to be hereafter defined by mutual agreement of the parties: to have and to hold, all and singular, the above bounded and described lot of ground as aforesaid, together with all the rights, profits, privileges and appurtenances whatsoever, thereunto belonging, as fully as the same was held and possessed by the said Ortega as aforesaid, unto the said John the Baptist Abraham Bronilet, for himself, his heirs and assigns, to the only proper use, benefit and behoof, forever.

And the said Antonio Ortega, for himself, his heirs and assigns, doth hereby covenant to and with the said John the Baptist Abraham Bronilet, his heirs and assigns, to warrant and promise to defend the title to the said granted and bargained premises from the lawful claim and demand of any person or persons whatever claiming or to claim the same.

In witness whereof, the said Antonio Ortega has hereunto set his hand and seal the day and date above mentioned.

ANTONIO ORTEGA.

Attest:
W. H. HENRIE,
JOSE DE LA ROSA.

TERRITORY OF CALIFORNIA,
District of Sonoma.

Personally appeared before me, the undersigned, alcalde of said district, Antonio Ortega, who is known to me to be the person whose name is subscribed to the foregoing deed, as having executed the same, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Given under my hand at office, in Sonoma, this first day of May, A. D. 1849.

L. W. BOGGS.

Filed in office Dec. 2d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deed 2—White.

Know all men by these presents, that I, John Baptist Bronillet, of Columbia city, in the Territory of Oregon, for and in consideration of the sum of five thousand dollars ($5,000), of which five hundred ($500) dollars have been paid, and the balance to be paid in the following successive years, at one thousand six hundred ($1,600) dollars each year, by Charles White, of Pueblo, Sn. José, in California, have this day bargained, sold, released, remised, and quit-claimed, and by these presents do hereby bargain, sell, remise, and quit-claim, unto the said Charles White, his heirs and assigns, forever, all my right, title, interest, estate, claim, property, and demand whatsoever, both at law and in equity, and as well in possession as in expectancy, of, on, and to the rancho known by the name of the Arroyo de San Antonio, lying in the county of Sonoma, State of California, being bounded as follows, to wit: on the north by the oak grove of the Miseria; on the east by the estero of Petaluma; on the south by the rancho of Carnillo; and on the west by the laguna of San Antonio; with all and singular the hereditaments and appurtenances, pieces, parcels, and lots of land thereunto belonging, free from all incumbrances caused or permitted by me, or my heirs, executors, or administrators, and free from the title, right, or claim of any and all other person or persons whatsoever, claiming by, through, or under me, my heirs, executors, administrators, or assigns, but not against any other claim, demand, or title.

In testimony whereof, I, the aforesaid John Baptist Bronillet,

have hereunto set my hand and seal this 19th day of January, A. D. 1833, in Oregon city, Oregon Territory.

J. B. A. BRONILLET.

Signed, sealed, and delivered in the presence of—
MICHAEL L. ACCOLIE,
B. DELORME,
G. LE CLAIRE.

STATE OF CALIFORNIA,
Santa Clara county, ss.

On this twenty-ninth day of August, A. D. one thousand eight hundred and fifty-three, came personally before me, recorder in and for the said county, Michael L. Accotti, to me personally known to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, and who, being duly sworn, doth, on his oath, declare, that he is the identical Michael L. Accotti whose name appears as a witness to the foregoing conveyance; and that he signed his name thereto as a witness at the request of J. B. A. Bronillet, whose name is subscribed to the said conveyance; and that the said J. B. A. Bronillet executed the said deed of conveyance freely and voluntarily, and for the uses and purposes therein mentioned, and for the consideration therein appearing.

Given under my hand and private seal (having as yet no official seal provided) the day and year last above written.

[L. S.]

J. M. MURPHY,
County Recorder.
By F. LEWIS, *Deputy.*

Filed in office Dec. 5th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Conveyance.

This indenture, made and entered into on the fifteenth day of November, A. D. eighteen hundred fifty-two, by and between Antonio Ortega, of the county of Contra Costa, State of California, of the first part, and Charles White, of the city of San José, State of California, of the second part, witnesseth: that the parties of the first part, for and in consideration of the sum of five thousand five hundred dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold and conveyed, and by these presents doth bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land lying and being in the county of Sonoma, State of California, being known as the rancho of the arroyo of San Antonio, being bounded on the

north by the oak grove of the Miseria, on the east by the estero of Petaluma, on the south with the rancho of Camila, and on the west by the laguna of San Antonio, and containing three leagues, more or less: to have and to hold the aforesaid tract or parcel of land, with all the rights and privileges thereunto belonging, together with all rights in houses, woods, ways, waters, or other things thereon, to the said party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part hath hereunto set his hand and seal the day and year first above written.

LEONIDIO DUQUE Y ORTEGA. [SEAL.]

JOSÉ PENA,
W. R. BUCKLEY,
ANTO. PENA.

STATE OF CALIFORNIA,
County of Santa Clara, ss.

On this twenty-fourth day of November, eighteen hundred and fifty-two, personally appeared before me, a notary public, in and for said county, William R. Buckley, subscribing witness to the foregoing instrument, personally known to me to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, and made oath that he personally knows the said Leonidio Duque y Ortega, who executed the foregoing instrument; that he saw him sign his name thereto, and heard him acknowledge the same as his act and deed; and that he, the said William R. Buckley, subscribed his name thereto as a witness, in the presence of said Ortega.

In testimony whereof, I have hereunto set my hand and affixed [SEAL.] my official seal at office, in the city of San José, on this 24th day of November, 1852.

WILLIAM L. SMITH,
Notary Public.

Filed in office Dec. 2d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Affidavit and Motion of the U. S. Law Agent.

558.—Charles White, claimant.

J. H. McKune, U. S. law agent, says, on oath, that when the above entitled case was submitted, that he was not present at the session of this board next before it was submitted.

The claimant's attorney announced that the case was ready for submission, and affiant, on behalf of government, stated that he was not ready, and desired that the depositions of two witnesses might be taken before submission.

A subpœna had previously been issued for Francisco Miranda and Teodoro Miranda, and they were produced as witnesses after the submission of the case, according to an oral understanding with V. E. Howard that the depositions should be taken and used in the case without its being restored to the docket; but when the witnesses were produced, the attorneys for claimant neglected to appear for cross-examination, though notified verbally that we should proceed to take the depositions.

Affiant refers to the depositions of said witnesses herewith presented, and says he expects to prove the facts therein stated, if the case is restored to the docket.

J. H. McKUNE.

Subscribed and sworn to before me, April 24th, 1855.

R. AUG. THOMPSON, *Com'r*.

Motion is made to return the above case to the docket.

J. H. McKUNE,
U. S. Law Agent.

Filed in office April 24th, 1855.

(Signed) GEO. FISHER, *Sec'y*.

The Opinion of the Board, delivered by Com'r R. Aug. Thompson.

ELLEN E. WHITE, Administratrix of Charles White, dec'd, vs. THE UNITED STATES. } No. 558.—Arroyo de San Antonio.

The petitioner in this case has offered in evidence an original espediente, containing—

First. The petition of Antonio Ortega to the governor for a grant of the lands claimed, describing them by well-defined metes and bounds, dated June 12th, 1840.

Second. A marginal decree by Gov'r Alvarado, referring the same to the military commandant of the frontier of Sonoma, for his report as to the qualifications of the petitioner and the capacity of the land to be granted.

Third. The report of that officer, setting out that the party possessed the necessary requisites to be attended to, and that the lands were vacant.

Fourth. A decree of concession by the governor, dated August 10th, 1840, in which he declares that, by virtue of the faculties with which he is invested, he grants to Don Antonio Ortega the land petitioned for, with the understanding that, to expedite the respective title and to regulate the proper documents by which the boundaries shall be marked out and the necessary proceedings completed, he shall make out a map, as required by the laws, which

he shall present at the proper time, and directs the decree to be delivered to him for his security in the mean time.

The genuineness of these documents and of the respective signatures attached to them is fully proved. It also appears that they were duly delivered to the grantee, who some time afterwards presented them to the governor at Monterey, accompanied by the map or diseño, with a view of having the title perfected by the issuing of the formal grant; but in consequence of the assembly not being in session, they were not acted on at the time, and Ortega subsequently left the country for Oregon, leaving his papers in the hands of the governor. It is also proved that Ortega never occupied the land personally, but it was occupied for him by the family of his father-in-law, Juan Miranda, who, according to the evidence of Gen. Vallejo, went on the land in the year 1839 or '40, under a provisional right of settlement, granted by him, as director of colonization, to the said Ortega. He built a house on the land, stocked it with horses and cattle, and had a portion of it in cultivation.

Ortega was absent in Oregon about four years; and during his absence Miranda applied to Governor Micheltorena for a grant of the land in his own name, but no title was ever issued to him. The son of Juan Miranda continued to occupy the land until the return of Ortega from Oregon. After his return from Oregon, Ortega claimed the land, and procured his title-papers from Governor Alvarado, for the purpose of asserting his rights to it. He, however, took no further steps in the matter, and subsequently conveyed all his interest in the premises to the parties through whom the present petitioner derives her title.

Taking the whole testimony in this case, we do not think it establishes a very strong equity in favor of the grantee; but according to the ruling of the commission in similar cases, the provisional grant by Alvarado, delivered to the party at the time it was made, accompanied by evidence of a performance of the actual conditions attached to colonization grants, would give to the grantee an equitable title to the land, which the Mexican government would be bound in good conscience to perfect—this would bring it within that class of titles which are protected by the treaty of cession, and would consequently entitle the grantee to a patent from the United States. It is clear, from the testimony, that Miranda originally entered and held under the grant to Ortega; his subsequent attempt to obtain a grant to himself was clearly in fraud of the rights of his landlord, and would not operate in derogation of his title.

The occupation and cultivation by Miranda must be considered as the acts of Ortega, under whose authority they were performed. They thus constitute a full compliance with the conditions of the grant, and establish his equitable right to a confirmation.

All his interest in the premises has been transferred by proper legal conveyance to the husband of the present claimant, in whose

favor, as his legal representative, a decree of confirmation will be entered.

Filed in office June 26th, 1855.

GEO. FISHER, *Sec'y*.

Decree of Confirmation.

THE ADMINISTRATRIX OF CHARLES WHITE, dec'd,
vs.
THE UNITED STATES. } No. 558.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid; and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Sonoma, and is known by the name of Arroyo de San Antonio, being the same which was granted by Governor Alvarado to Antonio Ortega on the 10th of August, 1840, and is bounded as follows: On the south by the ranch of Camillo, on the north by the *Pallo* de la Miseria, on the east by the Estero de Petaluma, and on the west by the Laguna de San Antonio, containing about four square leagues.

For a more particular description, reference to be had to the original espediente and map, filed among the papers in the case.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office June 26th, 1855.
(Signed) GEO. FISHER, *Sec'y*.

Order.

And it appearing, to the satisfaction of this board, that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifty-three pages, numbered

from 1 to 53, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 558 on the docket of the said board, wherein Charles White is the claimant against the United States for the place known by the name of San Antonio.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

(Signed) GEO. FISHER, *Sec'y.*

Notice of Appeal.

558.—"San Antonio."—Charles White, Claimant.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 31 *Dec.*, 1855.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed Feb'y 11, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Notice.

In the District Court of the United States, in and for the northern district of Cal'a.

THE UNITED STATES
vs.
ELLEN E. WHITE et als., heirs of C. White, dec'd.
} No. 558.—Before the U. S. land com., and now pending in said dist. court.

To VOLNEY E. HOWARD, Esq.:

SIR: You will please take notice that on Tuesday next, the 29th inst., at 11 o'clock in the forenoon of that day, before George P.

2654

Johnston, U. S. commissioner, at the office of the said Johnston, I shall proceed to take the depositions of John Martin, Teodoro Miranda, Francisca Ortega, Joel Walker, ——— Campbell, and others, to be used as evidence in the above cause on the part of the United States. Your attendance (you being counsel and attorney for the said appellees) is requested at the time and place specified.

Respectfully yours, &c.,

A. GLASSELL,
Ass't U. S. Att'y.

San Francisco, April 22, 1856.

Endorsed: I hereby acknowledge due service, by copy, of the within notice.

V. E. HOWARD.

Deposition of Jose Ramon Mesa.

UNITED STATES DISTRICT COURT,
Northern district of Cal'a.

SAN FRANCISCO, *April* 29, 1856.

On this day, before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came José Ramon Mesa and Francisca Miranda, witnesses produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the board of commissioners, and were duly sworn, and testified as follows, their evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present, A. Glassell, acting U. S. dist. att'y, on behalf of the United States, and E. L. Goold, esq., by request of V. E. Howard, esq., on behalf of claimant and appellee.

Questions by the Acting Dist. Att'y.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is José Ramon Mesa; I am thirty-two years of age; and I live in Marin co., California.

Question 2. Do you know the rancho "Arroyo de San Antonio," in Sonoma county, claimed in this case; if yea, how long have you known it?

Answer 2. I do know the rancho "Arroyo de San Antonio," and have known it ever since I was fourteen years of age.

Question 3. By whom, if by any one, was said rancho claimed and occupied?

Answer 3. It was claimed and occupied by Juan Miranda.

Question 4. From what time did Juan Miranda occupy that rancho?

Answer 4. He occupied it nineteen or twenty years ago.

Question 5. How or in what manner did Juan Miranda occupy that rancho?

Answer 5. He first occupied it by consent of Mariano G. Vallejo; he occupied it by putting about three hundred head of cattle on it, about thirty wild mares, and some tame horses; he built a house and a corral, and cultivated a portion of the land near the house.

Question 6. Were you acquainted with Juan Miranda?

Answer 6. I knew him well; he raised me.

Question 7. To whom did the property which you have mentioned as being on said rancho belong?

Answer 7. The property belonged to Juan Miranda.

Question 8. Do you know Leonito Antonio Duque de Ortega; if yea, how long have you known him?

Answer 8. I do know said Ortega, and have known him ever since he arrived in this country from Mexico.

Question 9. Did the said Ortega ever at any time live on and occupy the said rancho "Arroyo de San Antonio?"

Answer 9. He never did.

Question 10. What were the circumstances, or what was the condition of the said Ortega, as to money matters or property?

Answer 10. I never knew him to have any money or other property, except one horse; he was a poor man; a sort of overseer. I never knew him to have but one horse.

Question 11. To whom, by general report and reputation among all the neighbors, did the said "Rancho de San Antonio" belong?

(The attorney for the claimant objects to this interrogatory on the ground that it is hearsay evidence, and that it tends to the introduction of parole evidence to prove a title.)

Answer 11. Everybody knew it as belonging to Juan Miranda.

Cross-examination.—Questions by the Att'y for Claimant.

Question 12. How do you know that all the cattle and other property on said rancho belonged to Juan Miranda?

Answer 12. When Juan Miranda went to settle on the rancho, he took those cattle from the mission to the rancho; Miranda had been working on the mission for some years, and the cattle were given to him in pay for his labor. I saw the cattle delivered to Miranda (by the consent of Don Mariano G. Vallejo) by Salvador Vallejo, and I saw them branded by Miranda with his brand, which he had made at a blacksmith's shop.

Question 13. How do you know that Salvador Vallejo had the consent of Mariano G. Vallejo to deliver the cattle to Miranda?

Answer 13. At the time the cattle were vented and branded, Mariano G. Vallego was present, as also Salvador Vallejo and Juan Miranda, and I heard the conversation between them. I cannot now repeat the conversation, but I gathered from what was said that the cattle were delivered by the consent of M. G. Vallejo.

Question 14. How do you know the rancho de San Antonio belonged to Miranda?

Answer 14. I know that Miranda first occupied the rancho by the provisional consent of M. G. Vallejo, for the purpose of afterwards applying to the Mexican government for a title to it.

Question 15. Is this last the only way that you know the rancho belonged to Juan Miranda?

Answer 15. This last is the only way whereby I knew the rancho belonged to Juan Miranda.

Question 16. Who first spoke to you about coming here to give your testimony in this case?

Answer 16. Mr. Heintzleman first spoke to me about my coming here to give my testimony in this case.

Question 17. Did not Mr. Lusk, who is now present, first ask you to come here?

Answer 17. Mr. Lusk and Mr. Singley first spoke to me, and Mr. Heintzleman afterwards; Mr. Lusk and Mr. Singley told me Mr. Heintzleman was the party interested in the case; they applied to me for him.

Question 18. Do Mr. Lusk or Mr. Singley, or does either of them occupy a portion of this rancho?

Answer 18. I do not know whether they or either of them do, or not.

his
JOSÉ RAMON ⋈ MESA.
mark.

Sworn to and subscribed before me, this 29th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Francisca Miranda.

Francisca Miranda, being duly sworn, deposes and says as follows, her evidence being interpreted by Clinton Palmer, the said sworn interpreter in this case.

Present, the same parties as in the foregoing deposition.

Questions by Acting U. S. Attorney.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Francisca Miranda; I don't know my age; I live in Petaluma, Cala.

Question 2. Are you acquainted with Leonito Antonio Duque de Ortega?

Answer 2. Yes, I know him; I am his wife.

Question 3. How long has it been since you were married to the said Ortega?

Answer 3. I do not know; I was married to him a long time before he went to Oregon.

Question 4. Do you know the rancho Arroyo de San Antonio, upon which Juan Miranda lived?

Answer 4. Yes, I know it.

Question 5. Did your husband ever have or claim any right, title, or interest in the said rancho?

Answer 5. No, he never did.

Question 6. Who occupied that rancho, and in what manner was it occupied?

Answer 6. It was occupied by my father, Juan Miranda, by having on it a house, horses, cattle, and cultivation.

Question 7. Did you ever visit this rancho while thus occupied?

Answer 7. I was on it while my father was on it; I lived there with him; after my husband went to Oregon, I had nowhere else to go, and was compelled to return to him.

Question 8. Did your husband ever pretend that Juan Miranda, or your brother, occupied the said rancho as tenants or agents for him before he went to Oregon?

Answer 8. He never did pretend that they occupied it for him as his agents or tenants before he went to Oregon; they occupied it in their own right.

Question 9. Did your husband possess *and* property, and what was his occupation and means of livelihood?

Answer 9. He had no property, and no regular business; he made his living by working whenever he could get anything to do.

Question 10. Had he any family besides yourself, and did he make any provision for you and them during his absence in Oregon?

Answer 10. He had two children when he went to Oregon, and left me enciente at the time; he made no provision for them whatever.

Question 11. Where did your husband live before he went to Oregon?

Answer 11. He was living at the house of John Reed, in San Rafael, near Sancilito.

Cross-examination.—Questions by the Att'y for Claimant.

Question 12. How did your father and brother get the title to the rancho, which you say they occupied in their own right?

Answer 12. They first obtained their right from Mariano Vallejo; my father went to Monterey for the purpose of obtaining a title

from the general government, but, in consequence of being taken sick, he was unable to attend to it, and came away, leaving the papers in the hands of Salvador Vallejo; that Don Salvador Vallejo said he had sent the title to that rancho by Don Manuel Vaca, but the title was never received by my father.

Question 13. How many times, before your husband abandoned you, did you and he quarrel?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 13. I never quarrelled with him, but he did with me.

Question 14. Before leaving you, did he not charge you with inconstancy?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 14. He never did accuse me; he was the guilty one.

Question 15. Have you been divorced from him or legally separated?

Answer 15. After his return from Oregon, he charged me before an American, who was represented to me as the governor of the State of California, with having a man; I appeared with my witnesses; and he appeared, but had no witnesses, and the matter was dropped.

Question 16. Since your husband abandoned you have you had any children, and how many?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 16. Since my husband abandoned me I have had three children, besides the one with which I was enceinte when he left.

Question 17. Since your husband left you and went to Oregon, have you ever lived with him?

Answer 17. I never have.

her
FRANCISCA ⋈ MIRANDA.
mark.

Sworn to and subscribed before me, this 29th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination of remainder of witnesses in the aforesaid case adjourned until to-morrow, at 11 o'clock a. m.

GEO. PEN JOHNSTON,
U. S. Comm'r.

Deposition of Jose S. Berreyesa.

SAN FRANCISCO, *April* 30, 1856.

Examination of witnesses resumed in aforesaid cause. José S. Berreyesa, a witness on behalf of the United States, being duly sworn, deposes and says, as follows; his evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present, the acting U. S. dist. att'y on behalf of U. S.; E. L. Goold, esq., appearing, by request of V. E. Howard, esq., for claimant.

Questions by Acting U. S. Dist. Att'y.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is José S. Berreyesa; I am thirty-seven years of age; and I live at Martinez, Contra Costa county, California.

Question 2. Are you acquainted with the handwriting of Jacob P. Leese, Governor Micheltorena, and Manuel Jimeno? If yea, state your means of knowledge.

Answer 2. I am acquainted with the handwriting of Jacob P. Leese, Governor Micheltorena, and Manuel Jimeno; I became so acquainted with their handwriting from having seen them write frequently, while in their respective official positions.

Question 3. A document is here shown to the witness, from the office of the U. S. surveyor general for the State of California, entitled "Espediente promovido por el ciudadano, Juan Miranda en solicitud del el terreno nombrado arroyo de San Antonio, No. 397." Look at the document now shown you, and state whether or not the signatures of the said Leese, Micheltorena, and Jimeno, where they occur in and upon said document, are their true and genuine signatures?

Answer 3. I have examined the document, and, according to the best of my knowledge and belief, the signatures of Leese, Micheltorena, and Jimeno, where they occur, in and upon said document, are their true and genuine signatures.

Question 4. State, if you know, in whose handwriting is the petition signed Jn. Miranda, which appears on the second page of the document shown you?

Answer 4. The said petition is in the handwriting of Joaquin Peña; I know his handwriting from having seen him write frequently.

Question 5. State, if you know, in whose handwriting that portion of the document shown you is, purporting to be a grant, on pages 5 and 6, and also on the last two pages of said document, on which there is any writing?

Answer 5. I believe the handwriting on the pages referred to is that of Francisco Arce; I have often seen him write in the offices of state at Monterey.

Another document is here shown the witness, being the original title-paper, a copy of which is contained in the transcript; said document being obtained from the archives of the U. S. land commission, now in possession of the U. S. surveyor general for the State of California, marked "Doc. H H No. 1, annexed to the deposition of L. A. D. de Ortega, taken before Com'r Hiland Hall."

2657

Question 6. Look at the document now shown you, and state, if you know, in whose handwriting is the petition dated June 12, 1840, and signed Antonio Ortega, or so much thereof as occurs after the words "Antonio Ortega, ciud'no?"

Answer 6. The handwriting after the words last mentioned is that of José de la Rosa; the words mentioned, written in pale ink, are in a handwriting unknown to me.

Question 7. Are you acquainted with the rancho "Arroyo de San Antonio," in Sonoma county? If yea, how long have you known it?

Answer 7. I am acquainted with the rancho "Arroyo de San Antonio." I lived in Sonoma county from the year 1837 to the year 1849, and have known the rancho since the year 1837.

Question 8. During the time that you lived in Sonoma, by whom was the said rancho claimed and occupied, if by any one?

Answer 8. During that time I never knew that rancho claimed by anybody but Juan Miranda, and never knew it occupied by anybody but Juan Miranda and his family.

Question 9. When did Juan Miranda first occupy that rancho?

Answer 9. I am not exactly certain, but I think he first occupied it in 1839.

Question 10. Can you state certainly whether he occupied it previous to 1840?

Answer 10. He certainly did occupy the rancho previous to the year 1840.

Question 11. In what manner was the said rancho occupied by Juan Miranda and family?

Answer 11. He occupied it by building a house on it. One of his married sons resided there permanently. They had a house, a corral, and some cattle on it, and cultivated some of the land. Juan Miranda went and came; not remaining there continuously, as his son did.

Question 12. Is Juan Miranda living or dead?

Answer 12. He is dead; I believe he died in 1845.

Question 13. Are you acquainted with Antonio Ortega? If yea, how long have you known him?

Answer 13. I am acquainted with him; I have known him ever since 1841.

Question 14. What were the circumstances of Antonio Ortega as regards money or other property?

Answer 14. Ortega, at the time I knew him, lived in a house in the city of Sonoma, and kept a little liquor store there; he cultivated some land, but it was not his. I did not know him to have any other property; the house was his, but he afterwards sold it.

JOSÉ S. BERREYESA.

Sworn to and subscribed before me this 30th day of April A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed May 1, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Certified copy of Espediente No. 397, *referred to in Deposition of J. S. Berreyesa.*

1844.

Espediente promovido por el cuidadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio.

No. 397.

Sello Cuarto, Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.
[SEAL.]

S'or Alcalde 1o de Sonoma:

Juan Miranda, vecino y radicado en la jurisdiccion de Sonoma, haute V. con el respeto qe. debe, hase presente, qe. hase moy de cuatro años qe. se halla poseyendo un sitio en el Arroyo de S. Antonio, al qe. le frie concedido provicionalm'te por el S'or Don Guadalupe Vallejo, cuyo papeles, pera la pretencion, parece se hase tras papelado, qe. aun que las ha reclamado no han parecido pr. cuyo motivo representa de nuevo, deciendo q. en otro sitio mantiene una n'o regulas de ganado Caballada y Siembras.

Por tanto suplica à V. se sirva qe. se corran los tramites de estilo pa. pedir el titulo de otro rancho pues solicita tres sitios segun demarca el adjunto diceño, en todo lo qe. queda vá reconocido.

Sonoma, F'bro 21, de 1844.

JN. MIRANDA.

Certifico qe. el terro qe. se solicita esta ocupado algunos años por el enteresado y no pertenece à pueblo ne corporacion alg'a Sonoma, Feb'o 20, de 1844.

JACOB P. LEESE.

MONTERREY, *Ab'l* 30, *de* 1844.

Ynf'e el s. s'rio del despacho.

MICHELTORENA.

S'or Gobernador:

El interesado hace cuatro años que tiene ocupado el terreno que pretende, con casa, Lavores y todos sus bienes, pues nunca há pertenecido à particular alguno el d'ho terreno segun manifesta el juez de Sonoma, pr. cuyo motivo y por ser el pretendiente un hombre honrado y cargado de familia se hace acredor, para que V. E. se digne concederle su solicitud, se asi lo tunize por conveniente.

Monterey, Mayo 2, de 1844.

MAN'L JIMENO.

MONTERREY, *Mayo* 3, *de* 1844.

Espidase el titulo. MICHELTORENA.

MONTERREY, *Octubre, ocho de* 1844.

Vista la peticion con que da principio este espediente, las informes que preceder con toda lo demas que se tuvo presente, y deber convino de conformidad con las leyes y reglamentos de la materia, declaro á D. Juan Miranda dueño, en propriedad del parage conocido con el nombre de Arroyo San Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma. Librese el correspondiente despacho, tomese razon en el libro respectivo y derijase este espediente à la ex'ma asamblea departamental para su aprobacion.

El ex'mo S'or D. Manuel Micheltorena, general de brigada del Ejercito Mejicano, gobernador y comand'te g'ral de este departam'to de California, asi lo mando decreto y firmo de que. Doy fée.

Sello Primero, Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco. PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

El cuidadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayundante G'ral de la Plana Mayor del mismo, Gobernador Comand'te G'ral é Inspector del Departamento de Californias.

Por cuanto D. Juan Miranda, ha pretendido para su beneficio personal, el de su familia el terreno que se nombre Arroyo de San

Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma; practicados previamente las diligencias averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades, que me son conferidas á nombre de la nacion Mejicana, he venido su concederle el terreno mencionado sujetandose à la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo vinculo ni otro gravamen alguno y ni aun donarlo.

2a. Podra sercarlo sin prejudicar las travecias caminos y servidumbres lo disfrutará, libre y esclusivamente destinandolo al uso o cultivo que mas le acomode.

3a. El terreno de que se hace donacion es de tres sitios de ganado mayor segun lo esplica el diseño respectivo. El juez que diere la posecion la hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para las usos conveniente.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo demas fines.

Dado en Monterrey á ocho de Octubre, de mil ochocientos cuarenta y cuatro.

[*Here follows map—original, page* 88.]

El ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comandante G'ral é Ynspector del Departam'te de Californias.

Por cuanto D. Juan Miranda, ha pretendido para su beneficio personal y el de su familia el terreno que se nombra arroyo de San Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma, practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me su conferidas á nombre de la nacion Mejicana he venido en conceder el terreno mencionado sujetandose á la ex'ma junta departamental y bajo las condiciones siguientes:

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo vinculo ni otro gravamen alguno y ni aun donarlo.

2a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y exclusivamente destinandolo al uso o cultivo que mas le acomode.

3a. El terreno de que se hace donacion es de tres sitios de ganado mayor segun lo esplica al diseño respectivo. El juez que diere la posecion lo hará medir conforme á ordinanza que dando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraveniere á estas condiciones perdera su d'ho al terreno y sera denunciable por otro.

En concecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey a ocho de Octubre, de mil ochocientos cuarenta y cuatro.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, exhibit a true and accurate copy of a document on file in said archives, entitled "Espediente promovido por el ciudadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio."

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this first day of May, 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Sur. Gen. for Cal'a.

Endorsed: Filed May 7, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Joel P. Walker.

United States District Court, northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, Adm'x
of Charles White, dec'd.

SAN FRANCISCO, CAL., *May* 1, 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to

administer oaths, &c., &c., came Joel P. Walker, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, J. J. Williams, esq., appearing for the U. S. district attorney on behalf of the U. S., and E. L. Goold, esq., appearing for V. E. Howard, esq., on behalf of the claimant; the claimant, James F. Stuart, esq., being also present: this deposition being taken by consent of all parties.

Questions by J. J. Williams, esq., Att'y for U. S.

Question 1. What is your name, age, and place of residence?

Answer 1. Joel P. Walker is my name; I am fifty-eight years of age; and I reside in Sonoma county, California.

Question 2. When did you first come to California?

Answer 2. I first came to California in 1841.

Question 3. Are you acquainted with Antonio Ortega? If yea, how long have you known him, and under what circumstances?

Answer 3. I am acquainted with Antonio Ortega; I have known him since 1842, and knew him in that year; he lived with me in Oregon about three years.

Question 4. When did you go to Oregon from California?

Answer 4. In or about the middle of May, 1843.

Question 5. Did any one accompany you to Oregon? If so, who?

Answer 5. A great many accompanied me, and among them was Ortega.

Question 6. While in Oregon did you have any conversation with said Ortega in regard to any lands in California, especially in connection with himself?

Answer 6. I had.

Question 7. State that conversation.

Answer 7. He stated that he had spoken to the authorities in California, or rather to General Vallejo, (he was the one in authority in granting lands on the north side of the bay of San Francisco,) about a piece of land on the estero Petaluma, but that he had not got any papers for it, but thought he could get them on his return to California.

Question 8. When did you return from Oregon to Cal'a?

Answer 8. In August, 1848.

Question 9. After your return in August, 1848, did you have any conversation with the said Ortega with regard to this same matter? If yea, please state that conversation.

Answer 9. I met with Ortega, that fall, in Sonoma, and he told

me he had gotten his papers for the land; he had promised me in Oregon if he got his land he would give me one league of it, and I asked him if he had gotten his papers, and he said if I would go down to his room with him he would show them to me—that they were there in his trunk; I went with him and saw the papers.

Question 10. What was the date of the said papers, by whom were they signed, and what quantity of land did they purport to convey?

Answer 10. The papers were dated in 1841; they were signed by Alvarado and M. G. Vallejo; there were no other signatures, that I remember having seen, in or upon them; they purported to convey two leagues of land; he read the grant to me; it was written in the Spanish language.

Question 11. How many papers were there, and what did they purport to be?

Answer 11. There were two papers; one was his petition asking for the land and a grant of the same, and the other paper was a map, to which there was no name.

Question 12. Look at the two papers now shown to you, marked respectively "Doc. H H No. 1, annexed to the deposition of L. A. D. de Ortega, taken before Comm'r Hiland Hall," "B. P. L. exhibit to deposition of Juan B. Alvarado, Dec. 7, 1854," and "Doc. H H No. 2, annexed to the deposition of L. A. Duque de Ortega, taken before Comm'r Hiland Hall," "A. P. L. exhibit to deposition of Juan B. Alvarado, Dec. 7, 1854," produced from the office of the surveyor general of the U. S. for the State of California, and heretofore filed in this case when before the U. S. land commission, and state whether or not they are the same papers shown you as aforesaid by the said Ortega, in 1848?

Answer 12. I have never seen either of the papers now shown me, before to-day. They are not the papers which were shown me by Ortega in '48.

Question 13. Had the paper purporting to be a grant, which was shown to you by Ortega, the name of Alvarado in one, or two, or more places?

Answer 13. I did not see the name of Alvarado on that paper in more than one place; it was on the first page, in the lower right-hand corner.

Question 14. What were the circumstances of the said Antonio Ortega previous to his trip to Oregon, as regarding property or money?

Answer 14. As regarding his money matters I know nothing; he had no property that I know of, except one cow and a couple of horses which were given him, and which he took with him to Oregon; he used to be knocking about Gen. Vallejo's as a sort of steward; his family lived in a small adobe house close by.

Question 15. When in Oregon, did you render him any service

which induced him to make you the promise of the land of which you have before spoken?

Answer. 15. I don't know what induced him particularly to promise me the land; but when in Oregon, in the winter-time when it was cold and wet, I gave him blankets, took care of him, fed, clothed, and sheltered him; I also started him home to California, in or about the fall of 1845, but he was wrecked and returned to me almost naked; and after that, I kept him until the winter of 1846, or the spring of 1847, when I started him home again.

Question 16. In what respect did the map shown to you in 1848 by Ortega differ from the one just shown you?

Answer 16. The map which he showed me was nothing but marks with the pen on a piece of paper, showing the course and bends of the estero, and I supposed was made by himself; it was nothing like the map now shown me.

Cross-examination.—Questions by the Attorney for the Claimant.

Question 17. Are you acquainted with the Spanish language?

Answer 17. I ought to be; I have been long enough among the Spaniards; I am partially acquainted with the language; I went to Mexico in 1822, and have been dealing with Spaniards ever since, and have spoken and understood the language since that time, though I do not speak it as well as some do.

Question 18. Can you read the Spanish language?

Answer 18. I can take a piece of paper and get the contents of it; I will not say that I can read it, for I am not a Spanish scholar.

Question 19. Did you read or did you endeavor to read the grant shown you by Ortega?

Answer 19. I looked over the grant, but neither read nor endeavored to read it; as I have said, Ortega read it to me; I saw the words "dos sitios" in it, and a good many words I did not understand; it was badly written.

Question 20. Did Ortega read it to you in English, or Spanish?

Answer 20. He read it in Spanish; it was written in Spanish, and Ortega could not speak English.

Question 21. Do you know what motive Ortega had in reading to you the contents of the document, after stating to you he had it in his possession?

Answer 21. I do not, unless it was to convince me that he had the papers, for I doubted whether he had them, and often told him in Oregon that I doubted whether he could or would get them.

Question 22. Did you object to the donation of the league you have spoken of?

Answer 22. I did; I thought the papers were antedated; though I gave no reasons to Ortega for objecting to the donation.

Question 23. How many times did Ortega offer you the land, and how often did you object to taking it?

Answer 23. Ortega offered me the land repeatedly, and I put him off, without giving him any reason; I didn't want to hurt the old man's feelings.

J. P. WALKER.

Sworn to and subscribed before me, this 1st day of May, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, Friday, May 2, A. D. 1856, at 10 o'clock a. m.

SAN FRANCISCO, CAL.,
May 2, A. D. 1856.

Examination of Joel P. Walker resumed from yesterday, as witness for the U. S. in the foregoing case.

Cross-examination continued.—Questions by the Att'y for Claimant.

Question 24. After the confirmation of the claim, did you on more than one occasion ask Ortega for the league?

Answer 24. No; I named it to him but once; and in course of conversation with him in this place, I said to him: Antonio, I want my land now. I knew that he had given it away to the priest before—at least I had heard so. He then told me he had done so.

Question 25. Did you ever hear that before the confirmation of the claim?

Answer 25. Yes, I had heard it.

Question 26. Why did you not ask him for the land before the confirmation of the claim?

Answer 26. I had not occasion to ask him, for he had often offered it to me; always offered it to me when I met him, and said: Why don't you go on to your land? I always gave him an evasive answer. I did not want to hurt the old man's feelings; I felt friendly to him.

Question 27. After you had heard of his giving the land to the priest, and before the confirmation, did you give him one of these evasive answers?

Answer 27. I do not recollect; the old man left Sonoma with his two boys, and went over to Santa Clara or San José. He took his two boys from his wife, and told me he intended to put them to school at Santa Clara or San José; and I rarely met him, except when I saw him in this city.

Question 28. Do you know whether he abandoned his wife on the ground of adultery?

Answer 28. Ortega told me in Oregon that he never intended to live with her; that Salvador was attending to her, and that she would not suffer. I know nothing of my own knowledge. He told me that he left her for adultery.

(The attorney for the U. S. objects to the foregoing answer as irrelevant, hearsay, and otherwise incompetent testimony.)

Question 29. Do you recollect where you were when Ortega first made you the offer of the land?

Answer 29. Yes, I do; it was at Sonoma; it was about the 2d day of October, 1848.

Question 30. About how much time elapsed before Ortega offered you the land the second time?

Answer 30. I do not recollect; it was not a considerable time—probably two weeks or a month.

Question 31. About how long after that did he again offer you the land?

Answer 31. About the same time; whenever I met him he would say: Why don't you go on the land?

Question 32. Did you not at different times give him different answers?

Answer 32. I cannot tell about the difference. I always gave him some evasive answer.

Question 33. Did the same motive influence you the first time and the other times when you met Ortega, as spoken of above, in giving him evasive answers?

Answer 33. Yes, the same.

Question 34. Was it because you considered the title antedated?

Answer 34. Yes, it was.

Question 35. What is the said Ortega's age, and where did he live before he came to California?

Answer 35. From his own account he must be upwards of eighty years of age. He told me that he lived in New Orleans in 1802 and 1803; was a lieutenant in the Spanish army 25 years, and was a priest about three years.

Question 36. Could Ortega write?

Answer 36. He could write his name and read.

Question 37. What was Ortega's general character?

(Objected to by the att'y for U. S. as incompetent.)

Answer 37. I never heard anything against him in my life.

Question 38. Where were you and Ortega when he first proposed to you to take a league of land?

Answer 38. In Sonoma.

Question 39. Did he speak to you about taking it when you were in Oregon?

Answer 39. He told me if he got the land I was to have one league of it.

Question 40. While you were in Oregon did not Ortega tell you that he had a grant or title to a piece of land, and was going to get it perfected?

Answer 40. He did not.

Question 41. Since your return from Oregon, have you not stated to one or more persons that Ortega did tell you so?

(This question is objected to by the att'y for the U. S. in point of form, and as not specifying the names of the persons, or of any of them.)

Answer 41. I never did; but I did tell some persons that Ortega said he had spoken for some land, and expected to get it when he got back from Oregon; and I also told some persons that I believed the papers he got when he returned from Oregon were antedated.

Question 42. Since your return from Oregon have you advised any person to purchase under the Ortega title, stating it was a good title?

(Objected to by the att'y for U. S. for the reasons last above assigned.)

Answer 42. I never did; but I advised Valentine to hold on to the Miranda title, for if there was any good title, I believed that was the one.

Question 43. Since your return from Oregon, did you not state to Charles Patten that Ortega told you in Oregon he had a grant or title to land in California, and that he was coming to get it perfected?

(Objected to by the attorney for the U. S.)

Answer 43. I have no recollection of having any conversation with Mr. Patten about it.

Question 44. Can you say that you did not make this statement to Charles Patten?

(Objected to by the attorney for the U. S.)

Answer 44. I have no recollection of ever speaking to him of land matters. I might have talked to him of the grant, or I might not; but I have no recollection of having done so in my life.

Question 45. Did Ortega continually offer you the league up to the time of the confirmation of the title?

Answer 45. While he remained in Sonoma he did; after he left Sonoma he never did.

Question 46. When did he leave Sonoma?

Answer 46. I do not know when it was.

Question 47. When Ortega first spoke to you about the league in Oregon, what was your answer?

Answer 47. I do not recollect what it was.

Question 48. What did you say the 2d, 3d, and 4th time?

Answer 48. I do not recollect what it was. I do not recollect when the 2d, 3d, and 4th time was.

Question 49. Did you make any objection on any of these occasions to receiving the league?

Answer 49. I do not recollect of having made any objections to the old man.

Question 50. Do you recollect saying anything implying that you would accept or reject it, in Oregon?

Answer 50. No, I never did. I told the old man that if the flag was changed I was coming back; but if it was not, I was not going to return.

Question 51. After the title was confirmed, did you ask him for it but once?

Answer 51. I only mentioned it to him once.

Question 52. What was his answer?

Answer 52. He answered that he had given it to the priest for the education of his boys. The Ortega of whom I am speaking married Juan Miranda's daughter.

JOEL P. WALKER.

Sworn to and subscribed before me this 2d day of May, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed May 7, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Michael L. Acolti.

United States District Court, northern district of California.

SAN FRANCISCO, *Nov'r* 14, 1856.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Michael L. Acolti, a witness produced on behalf of the claimant in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, Volney E. Howard, esq., counsel for the claimant, and Wm. Blanding, esq., U. S. district attorney.

Questions by Claimant's Counsel.

Question 1. What is your name, age, and place of residence?

Answer 1. Michael L. Acolti; am 50 years of age, and reside in Santa Clara county, Cal'a; I am a clergyman.

Question 2. How long have you resided in California?

Answer 2. I came here first in the year 1849, where I resided

nine months; then I went to Oregon, where I resided until within the last twelve months, with the exception of the time I was travelling in Europe and the Eastern States.

Question 3. Are you acquainted with Antonio Ortega?

Answer 3. I am; I first became acquainted with him in Oregon, in the year 1845, I think; I knew him there about one year; he lived with me in my house about that length of time.

Question 4. Do you know of Ortega attempting to return to California by sea?

Answer 4. I do.

Question 5. What do you know of the circumstances of his attempting to return to California from Oregon?

Answer 5. To the best of my recollection it was in the year 1845 or 1846 he took passage on a vessel, which vessel was wrecked on the bar at the mouth of the Columbia river; he returned to my house entirely destitute, having lost everything in the wreck; I furnished him with some clothing, blankets, &c.

Question 6. With whom did Ortega stop from that time until he again started for California?

Answer 6. I am not sure, but I think with Walker or Waldo; I do not recollect which it was.

Question 7. During the residence of Ortega in Oregon with you, did he make any overtures to you for the sale to you of a tract of land claimed by him in California? And if so, state what overtures were made, and in reference to what tract of land.

(Question objected to by U. S. dist. att'y as assuming a fact, as leading, as irrelevant, as hearsay, and as being otherwise incompetent.)

Claimant's attorney waives, for the present, the question as above propounded, and puts the following:

Question 8. Did Ortega, while residing with you in Oregon, make any overtures to you for the sale to you of any land in California?

(Objected to on the part of the U. S. as hearsay, irrelevant, and incompetent testimony.)

Answer 8. He did not offer for sale, but for donation.

Question 9. Please state all the circumstances within your knowledge in reference to such offer of donation.

(Same objection on the part of U. S. as to question 8.)

Answer 9. He requested me, together with some other priests, and with some sisters of Notre Dame, to come to California, for the purpose of opening a school, stating that he would give, together with that piece of land, half his stock of cattle on the land, on the condition that I would educate his children; in reply to my question whether the land was secure, he stated that he had a grant, and the title in California, and his wife, I think he said, was living on the place.

Question 10. After Ortega returned to California, did you have any correspondence with him?

(Same objection on the part of U. S. as to preceding question.)

Answer 10. He wrote to me a letter making the same proposal as above stated, and urging me to come to California.

(This answer is objected to for the reason above assigned, and for the further reason that the letter, the contents of which were stated, is not produced.)

Question 11. Did you come to California in answer to that letter; and if yea, when?

(Objected to as irrelevant and incompetent.)

Answer 11. I did not.

Question 12. Claimant's counsel here presents certain papers to the witness, to wit, the original petition, grant, and map, copies of which are contained in the transcript of the record, and asks the following question: Have you ever before seen the above mentioned papers; and if yea, when first, and where?

(Objected to on the part of the U. S.)

Answer 12. I have seen said papers in San Francisco; I first saw them in 1849.

Question 13. Under what circumstances did you first see them?

Answer 13. Said papers were delivered to the Rev'd Mr. Bronillet by Ortega; on my arrival in San Francisco from Oregon, Mr. Bronillet had to leave for Oregon, and he left with me the said papers; they were delivered to me in Dec., 1849; I kept them until the month of June, 1850, when I left for Oregon; he then placed them with Father Nobili.

Question 14. Claimant here offers a paper, purporting to be a deed from Antonio Ortega to J. B. A. Bronillet, produced from the archives of the U. S. surveyor general of Cal'a, marked "C. P. L.," exhibit to the deposition of José de la Rosa, Dec. 7, 1854, in case No. 558, before the board of U. S. land commissioners, and asks as follows: State what you know in reference to this paper.

Answer 14. This paper was delivered to me at the same time that the other papers referred to in the foregoing answer were, and remained the same length of time in my possession.

Question 15. Do you know what was the real consideration of this deed?

Answer 15. I do, as I was personally interested in the matter; I know the consideration; it was that the children of Ortega were to be educated.

Question 16. Has this consideration been complied with, or performed?

(This and the foregoing question and answer objected to on the part of the U. S. as irrelevant and incompetent.)

Answer 16. It has; and I am now educating one of the daughters.

Question 17. Is this education of Ortega's children in considera-

tion of said conveyance, the consummation of the arrangement proposed by Ortega in Oregon, to which you have before testified?

(Objected to as irrelevant and incompetent.)

Answer 17. It is.

Cross-examined by U. S. Dist. Att'y.

Question 1. In what month of the year 1845 did you first make the acquaintance of Ortega?

Answer 1. I do not recollect the month—it was in the early part of 1845.

Question 2. How came Ortega to go to your house at that time?

Answer 2. He made my acquaintance as being a clergyman, and because I was the only one who could speak Spanish.

Question 3. Were you at home in Oregon during the whole of the year 1845?

Answer 3. I was.

Question 4. Did Ortega tell you by whom this land was granted to him?

Answer 4. He said it was granted him by the Mexican government, and I think he said it was in consideration of his military services.

Question 5. What was the date of the letter above referred to, written to you by Ortega after his return to Cal'a?

Answer 5. I cannot remember the date.

Question 6. Did you see Ortega deliver what you have called the original papers to the Rev'd Mr. Bronillet?

Answer 6. I did not; but as soon as Mr. Bronillet received the papers he wrote to me in Oregon informing me he had received them, and urging me to come to California. After my arrival here Ortega told me that he had delivered the papers to Father Bronillet, and that is the way I know that the papers were delivered to the Rev'd Mr. Bronillet.

Question 7. What character of education did you give the children of Ortega, in consideration of the conveyance?

Answer 7. We taught them to read, to write, and speak English, according to their capacity. The daughter is now in the convent at Benicia, and is receiving a common education.

Question 8. Please state in what month of 1849 you first came to California.

Answer 8. In the month of December.

MICHAEL L. ACOLTI.

Sworn to and subscribed before me, Nov. 14, 1856.

Endorsed: Filed Nov. 14, 1856.

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Deposition of James B. Hine.

United States District Court, northern district of Cal'a.

SAN FRANCISCO, *November* 18, 1856.

On this day before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came James B. Hine, a witness produced on behalf of the claimant, in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, James F. Stuart, claimant, and Wm. Blanding, esq., U. S. dist. attorney.

Questions by claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. James B. Hine; am 57 years of age, and reside in Sonoma county, Cal'a.

Question 2. Are you acquainted with Joel P. Walker? if yea, when did you first make his acquaintance, and where?

Answer 2. I am acquainted with Mr. Walker, and I believe his name is Joel. I first made his acquaintance in Petaluma city, Sonoma county, in the summer or fall of 1854.

Question 3. Did he at that time enter into any conversation with you in reference to the Ortega grant or claim to the rancho "Arroyo de San Antonio?" and if yea, state what that conversation was.

(Objected to on the part of the U. S. as being leading, and tending to elicit hearsay and incompetent testimony, and for the further reason that no sufficient foundation has been laid in the deposition of the said Joel P. Walker for this evidence.)

Answer 3. He did. He stated that he knew Ortega in Oregon, some time before 1846, before the war. It was a transient conversation; one that I had no interest in. He told me Ortega told him in Oregon, that he owned three or four leagues of land on this ranch of which we were speaking; and we were then speaking of the Miranda ranch. He said then that Ortega claimed this ranch by a different claim from the Miranda claim, when he was in Oregon, and offered him (Walker) a league of land if he would come to California. He (Ortega) stated to him (Walker) that he owned the land.

Cross-examined by U. S. Attorney.

Question 1. Having no interest in this matter, did you pay particular attention to this conversation, so that it would make a lasting impression on your mind?

Answer 1. I think I recollect the conversation pretty well.

JAMES B. HINE.

Sworn to and subscribed this 18th Nov., 1856, before me.

Endorsed: Filed Nov. 18, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Charles Patton.

United States District Court, northern district of Cal'a.

SAN FRANCISCO, *January* 16, 1857.

On this day, before John A. Monroe, a commissioner of the United States before the northern district of California, duly authorized to administer oaths, &c., &c., came Charles Patton, a witness produced on behalf of the claimant in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, Volney E. Howard, esq., counsel for claimant, and Wm. Blanding, esq., U. S. dist. att'y, who requested that the witness be sworn on his voire dire, which was done accordingly.

Questions by U. S. District Attorney.

Question 1. Do you not claim a portion of the land, the title to which is involved in this case?

Answer 1. I do.

Question 2. Do you not claim it under the provisional grant purporting to have been made to Antonio Ortega, and which grant is the basis of this claim?

Answer 2. I do.

Question 3. If a decree of confirmation should be entered by the district court in this case, would you not be directly benefited by such decree?

Answer 3. I consider that I would.

(The attorney for the United States objects to the examination and testimony of this witness, upon the ground that he is directly interested in this claim, and because he is one of the parties for whose benefit the same is prosecuted.)

Witness is now sworn in chief.

Question 1. What is your name, age, and place of residence?

Answer 1. Charles Patton; am forty-two years of age, and reside in Sonoma county, California.

Question 2. Are you acquainted with Joel P. Walker; and if yea, how long have you known him?

Answer 2. I am; I have known him since the winter of 1849 and 1850.

Question 3. During this time, have you ever had any conversation with him in reference to the title of the rancho Arroyo de San Antonio claimed in this case? if yea, state when, and where, and what that conversation was.

(The attorney for the U. S. objects to the foregoing question, as tending to elicit hearsay testimony; or if intended in contradiction of the testimony of the said Joel P. Walker, heretofore taken in this case, or to discredit him as a witness, objects for the further reason that no sufficient foundation has been laid in the deposition of the said Walker for such testimony; and further, because of the interest of the said witness in the case.)

Answer 3. I have, early in 1854, at his residence in Mapa city; he told me that the title to that land was in Antonio Ortega; I told him that I had never heard of that title; he told me that Ortega's title was undoubtedly good; this conversation probably lasted from half an hour to an hour; I cannot recollect all that was said; but in the progress of it, he spoke of Ortega having lived with him in Oregon, and of his offering him a piece of his land, as he wanted Walker to settle on it; I spoke to Walker of the Miranda title; he said that the Ortega title was good; I do not know whether any one was present when we had this conversation, and heard it; he told me that while in Oregon, Ortega told him that he had a grant of land in California, and that if he, Walker, would come to this country he would give him a piece of his land; I had no interest in this land at the time of this conversation, but acquired my interest under the Ortega title about the 1st June, 1856; previous to that I had only interest as mortgagee, but no interest whatever at the time of this conversation.

(The attorney for the U. S. objects to the whole of this deposition, and protests against its being received or read in evidence, because of the interest of the witness directly in the result of this case, and for the other reasons above assigned.)

CHARLES PATTON.

Sworn to before me and subscribed Jan'y 16, 1857.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed January 16, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

2665.

Petition for Review.

To the honorable District Court of the United States in and for the northern district of California:

THE UNITED STATES
v.
CHARLES WHITE. } No. 346.—Tr. 558.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of land commissioners, whereby the claim of the appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said record was filed in this court on the 1st day of December, A. D. 1855; that a notice of appeal was filed on the 11th day of February, A. D. 1856, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title invalid.

WM. BLANDING, *U. S. Att'y.*

Endorsed: Filed January 31, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellants,
v.
E. E. WHITE, Adm'x, &c., Appellee. }

And now comes the appellee, and, for answer to the appellants' petition for review, says that there is no error in the proceedings in judgment of the said United States commissioners; that said claim is a genuine and valid claim, and appellee prays that the same may be confirmed by this hon. court, and the judgment of the commissioners in all things affirmed.

V. E. HOWARD,
for Appellee.

Endorsed: Filed January 31, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Stipulation and Order.

District Court of the United States for the northern district of Cal'a.

ELLEN E. WHITE, Adm'x of Charles White, dec'd, ads. THE UNITED STATES. } No. 346.

It is hereby stipulated agreed that the rule of the said court, requiring evidence tending to establish fraud to be taken in open court, or in presence of one of the federal judges, is waived in this case, both as regards the evidence heretofore or hereafter to be taken in this case, on appeal from the decision of the board of land commissioners.

HOWARD & GOOLD,
For Claimant.
WM. BLANDING,
Dis't Att'y.

Upon reading the above stipulation, it is ordered that leave be given to take further testimony in the above case, before the U. S. commissioner, either of the said district court, or of the circuit court of the U. S. for the districts of California, and that the said rule be waived according to the above stipulation.

OGDEN HOFFMAN,
U. S. Dis't Judge.

Endorsed: Filed March 10, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Stipulation.

THE UNITED STATES v. ELLEN E. WHITE, Adm'x of Charles White, dec'd.

It is hereby agreed and admitted that the signatures of J. P. Leese, J. Vioget, M. G. Vallejo, Pio Pico, José M. Covarrubias and Agustin Olvera, in and upon the original espediente referred to in, and a copy of which is annexed to the deposition of R. C. Hopkins, taken this morning in this case, the petition of Juan N. Padilla, for the rancho Roblar de la Madera, and proceedings thereon, are the genuine signatures of the respective signers above named; and also the genuineness of the certificate of Jimeno, and

of his signature thereto, is admitted, on the index referred to in, and extracts of which are attached to the said deposition of said Hopkins.

March 11, 1857.

HOWARD & GOOLD,
For Claimant.

Endorsed: Filed, March 12, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Proceedings at the instance of the citizen Juan Miranda, petitioning for the land named "Arroyo de San Antonio."

Translation of Espediente of Juan Miranda.

No. 397.

Fourth Seal—Twenty-five cents.

Authorized provisionally by the maritime custom-house, of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four, and one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

To the First Alcalde of Sonoma:

Juan Miranda, a resident and settled within the jurisdiction of Sonoma, before your honor represents, that for more than four years he has been in possession of a place (sitio) on the Arroyo of San Antonio, which was provisionally granted to him by Señor Don Guadalupe Vallejo, the papers in relation to which concession it seems have been misplaced; that although he has endeavored to recover them, they have not been found, for which reason he represents anew, saying that on said place (sitio) are maintained the regular number of flocks and herds, and the requisite cultivation. Wherefore he supplicates your honor that the necessary and accustomed steps may be taken in order to obtain the title to said rancho. He petitions for three sitios (tres sitios,) as is laid down on the accompanying map. For all of which he will remain obliged.

February 21, 1844.

JN. MIRANDA.

I certify, that the land solicited has been occupied several years by the interested party; that it does not pertain to any pueblo or corporation whatever.

Sonoma, Feb. 20, 1844.

JACOB P. LEESE.

MONTEREY, *April* 30, 1844.

Let the Secretary of State report upon the same.

MICHELTORENA.

To his Excellency the Governor:

The party interested has occupied the land he claims for four years, by cultivation, and by having a house therein with all his goods. Said land never has belonged to any one in particular, as is manifested by the report of the justice of Sonoma; for which reason, and because the claimant is an honorable man, and burdened with a family, he merits that your excellency should grant him the favor of acceding to his solicitude if you should deem it expedient.

Monterey, May 2, 1844.

MAN'L JIMENO.

MONTEREY, *May* 30, 1844.

Let the title issue. MICHELTORENA.

MONTEREY, *Oct'r* 8, 1844.

In view of the petition which commences this espediente, the foregoing reports, and all the rest that was borne in mind and necessary to be observed, in conformity with the laws and regulations on the subject, I declare Don Juan Miranda owner in property of the place known by the name of "Arroyo de San Antonio," bounded by the laguna and arroyo of the same name, by the crossing and estero of Petaluma. Let the corresponding title be made out and entered in the respective book, and let this espediente forwarded to the most excellent departmental assembly for its approval.

His excellency Señor Don Manuel Micheltorena, brigadier general of the Mexican army, governor and commandante general of the department of California, thus did command, decree, and sign, whereof I bear witness.

First Seal—One Dollar.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MICHELTORENA. PABLO DE LA GUERRA.

The citizen Manuel Micheltorena, Brigadier General of the Mexican army, Adjutant General of the staff of the same, Governor, Commandante General and Inspector of the Department of the Californias.

Whereas Don Juan Miranda has solicited, for his personal benefit and that of his family, the land which is named "Arroyo de

San Antonio," bounded by the laguna and arroyo of the same name, with the crossing and estero of Petaluma, the previous steps and investigations having been taken and made as required by the laws and regulations on the subject; by virtue of the authority vested in me, in the name of the Mexican nation, I have determined to grant to him the said land, subjecting it to the most excellent departmental assembly, under the following conditions:

1st. He shall not sell, alienate, nor mortgage it, impose ground-rent, entail, nor any other incumbrance, nor even convey it as a donation.

2d. He may fence it without prejudice to the crossings, roads, and public uses; he shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit him.

3d. The land of which donation is made consists of three square leagues (tres sitios de ganado mayor), as is explained by the respective map. The justice who gives the possession will have it measured according to law, the surplus that may result remaining to the nation for its convenient uses.

4th. If he violate these conditions he will lose his right to the land, and it will be denounceable by another.

In consequence whereof I command that, the present title being held firm and valid, an entry be made of it in the respective book, and that it be delivered to the interested party for his security and further ends.

Given in Monterey on the 8th of October, 1844.

Endorsed: Filed March 12, 1857.

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Translation of Espediente of J. N. Padilla.

Fourth Seal—Two Reales.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

To the Constitutional 1st Justice of Sonoma:

Juan N. Padilla, a resident of this district, as may be most expedient, before your honor appears and says: That having to apply to the departmental government, through a memorial, soliciting for my well being the place known by the name of Roblar de la Miseria, containing 3 or 4 square leagues (sitios de ganado mayor), a little more or less, and bounded on the east by land of Don Mariano G.

Vallejo; on the north by that of Don Juan Casteneda; on the west by that of Don Juan Vioget; on the south by that of Don Bartolo Boverquez; on the southeast with that of Don Juan Miranda:

Now, considering that I have to go so far as Monterey with my petition, only to obtain the decree of his excellency the governor, that the corresponding justice may report whether or not the place I solicit is vacant, and being anxious to obtain as soon as possible the favor of a grant to the place I solicit on account of the distance from this place to Monterey, I request that your honor may be pleased to ask the report of the adjoining neighbors beforehand, and certify to me the same, that I may annex it to this document, and transmit them to the departmental government, making oath that this is not done in malice, and whatever else may be necessary.

JUAN N. PADILLA.

OFFICE OF THE 1ST JUDGE OF SONOMA,
Nov. 26, 1844.

In my opinion it is proper to ask the reports of the adjoining neighbors, if the land solicited by the interested party is vacant or not, in order justly to declare the same.

JACOB P. LEESE.

The undersigned, in due form, declares that the place known by the name of Roblar de la Miseria contains in fact 3 or 4 square leagues, as expressed by the interested party, and that it does not belong to any particular individual whatever, which we certify at the request of the party interested, before the 1st judge of Sonoma, this 26th day of Nov., 1844.

J. VIOGET.

To his honor the Alcalde Don Luis Leos:

The land known by the name of Roblar de la Miseria, petitioned for by Don Juan Padilla, bounded on the east by that of Petaluma, of my property, as far as the little hills of said place, solicited for in this petition, is vacant, and I believe that it does not belong to any particular individual, corporation, or pueblo, and the subscriber believes that the boundaries, with the rest of the rancho, are the same as those mentioned in the preceding petition.

Sonoma, 11th December, 1844.

M. G. VALLEJO.

Pio Pico, senior member of the Departmental Assembly, and Governor ad interim of the Californias.

Whereas Don Juan Nepimerious Padilla has solicited, for his personal benefit and that of his family, the tract of land known

by the name of "Roblar de la Miseria," bounded by lands of Don Mariano G. Vallejo, Don Juan Castenade, Don Juan Vioget, Don Bartolo Boyorquez and Don Juan Miranda, the necessary investigations having previously been made, by virtue of the authority in me vested, in the name of the Mexican nation, I have thought proper, by decree of this day, to grant to him the said land, declaring it by these presents to be his property, in entire conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without interfering with the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, devoting it to the use or cultivation which may best suit his convenience, but he shall have it occupied by an inhabited house and flocks and herds.

2d. He shall solicit the respective justice to give him juridical possession in virtue of this patent, by whom will be marked out the boundaries, with the necessary landmarks, respecting always the legal rights of the adjoining land owners.

3d. The land of which donation is made is of the extent of four square leagues, a little more or less, (cuatro sitios de ganada mayor poco mas ómenos,) as is explained by the map attached to the espediente. The justice who may give him the possession will have it measured in accordance with law.

In consequence whereof I command, that the present title being held as firm and valid, an entry be made of it in the corresponding book, and that it be delivered to the party interested for his security and further ends.

Given in the city of Los Angeles, on this common paper, for want of that which is stamped, on the 25th day of November, one thousand eight hundred and forty-five.

An entry of this title in the respective book.

ANGELES, *May* 8, 1846.

These proceedings being submitted to the most excellent departmental assembly in session to-day, they were, by order of the same, referred to the committee on vacant lands.

PIO PICO. AGUSTIN OLVERA.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Certified Copy of Grant to Bartoleme Boyorquez.

Pio Pico, vocal dicano de la Asamblea Departamental, y Gobernador provisional de las Californias.

Por cuanto el ciudanano Bartolomé Boyorquez, ha pretendido para su beneficio personal y el de su familia el terreno nombrado

laguna de San Antonio, colindante al S. E. con Juan Martin, al N. O. con las Dos Piedras, al S. O. con los Camales, y al S. E. con Juan Miranda; practicadas previamente las averiguaciones necesarias, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido por decreto de este dia en concederle el mencionado terreno declarandole la propriedad de el por las presentes letras, de entera conformidad con la ley de 18 del Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre y esclusivamente y destinando lo al uso y cultivo que mas le convenga; pero tendra en el casa habitada y bienes servientes.

2a. Solicitara del juez respectivo le esi la posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos con los mojoneros necessarios perpetando el derecho legal de los colindantes.

3a. El terreno de que se ha hace donacion es de la estencion de seis sitios de ganado mayor segun esplica el diseño que obra en el espediente; el juez que diere la posesion lo hará medir conforme á ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valedero, se tome razon de el en el libro a que corresponde y se entreque al interesado para su resguardo y demas fines.

Dado en la ciudad a los Angeles, en este papel comun por falta del sellado á veinticinco de Noviembre, de mil ochocientos cuarenta y cinco.

Lueda tomada razon de este titulo en el libro a que corresponde.

ANGELES, *Mayo* 8, *de* 1846.

Dado cuenta en sesionde hoy á la ex'ma asamblea departamental con este espediente se mando pasar á la concesion de terrenos baldios.

PIO PICO, *Presid't.*

AGUSTIN OLVERA, *D. S.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CAL'A.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered

from one to three inclusive, exhibit a true and accurate copy of the grant forming part of a document on file in said archives, entitled "Espediente promovido por Don Bartolo. Boyorques en pretencion del terreno nombrado 'Laguna de San Antonio.'"

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the city of San Francisco, this 6th day of March, 1857.

[SEAL.] JOHN C. HAYS,
U. S. Sur. Gen'l for Cal'a.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk.*

Translation of Grant to Bartolome Bajorquez.

Pio Pico, senior member of the Departmental Assembly, and Governor ad interim of the Californias.

Whereas the citizen Bartolomo Bojorquez has petitioned, for his personal benefit and that of his family, the tract of land named Laguna de San Antonio, bounded on the S. E. by the lands of Juan Martin, on N. W. by the two rocks, (las dos piedras,) on the S. W. by Tomales, and on the southeast with the lands of Juan Miranda; the necessary investigations having been previously made, by virtue of the authority in me vested, in the name of the Mexican nation, I have thought proper by the decree of this day to grant to him the said tract of land, declaring it by these presents to be his property, in entire conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without interfering with crossings, roads, and servitudes; he shall enjoy it freely and exclusively, devoting it to the use and cultivation which may best suit his convenience; but he shall have a house upon it inhabited, and flocks and herds.

2d. He shall solicit the respective justice to give him juridical possession by virtue of this patent, by whom will be marked out the boundaries, with the necessary landmarks, respecting always the legal rights of the adjoining land owners.

3d. The land of which donation is made is of the extent of six square leagues, (seis sitios de ganado mayor,) as is explained by the map attached to the espediente; the justice who gives the possession will have it measured according to law.

In consequence whereof I command that, this title being held as firm and valid, entry be made of it in the corresponding book, and that it be delivered to the party interested for his security and further uses.

Given in the city of Los Angeles, on this common paper, for want of that which is sealed, on the 25th day of November, one thousand eight hundred and forty five.

An entry has been made of this title in the corresponding book.

ANGELES, *May the 8th*, 1846.

These proceedings being submitted to the most excellent departmental assembly in session to-day, they were, by order of the same, referred to the committee on vacant lands.

PIO PICO, *President.*

AGUSTIN OLVERA.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk.*

Deposition of R. C. Hopkins.

THE UNITED STATES
vs.
ELLEN E. WHITE, Adm'x of Charles White, dec'd. } No. 346.

United States District Court, northern district of California.

SAN FRANCISCO, *March* 11th, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came R. C. Hopkins, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Howard and Goold for claimant, and the U. S. dist. att'y.

Questions by the U. S. Dist. Att'y.

Ques. 1. What is your name, and what office, if any, do you at present hold?

Ans. 1. Rufus C. Hopkins; I am clerk in the office of the U. S. surveyor general, in the department of the archives.

Ques. 2. What papers have you under your custody in the archives pertaining to land titles in the State of California?

Ans. 2. The original archives of the Mexican government relating to titles in California, and other matters, together with the archives of the late board of land commissioners.

Ques. 3. Have you in this office the original document filed in No. 558, before the land commission, purporting to be a provi-

sional grant, signed by Governor Alvarado, to Antonio Ortega? If yea, please produce it, and state what are the different dates on said document.

(Objected to by att'ys for claimant.)

Ans. 3. I have the original document in my hands; the petition was signed Sonoma, June 12th, 1840, by Antonio Ortega; the marginal decree is dated June 20th, 1840, or '41. There seems to have been a change made in this date; it appears to have been written 1841 first, and then changed to 1840; this date seems to have been altered with paler ink.

(Answer objected to.)

Ques. 4. Please look at the petition on this document, signed Antonio Ortega, and state whether the whole of it appears to be written at the same time, with the same pen and ink.

(Objected to.)

Ans. 4. The words "ex'mo s'or gobernador," "Antonio Ortega, ciud'no," are written in paler ink than the balance of the petition.

Ques. 5. Have you in your custody the original map filed in said case, No. 558, and also the original map contained in the expediente, "Promovido por el cuidadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio," No. 397? If yea, please produce them, and describe the one in reference to the other.

Ans. 5. I have both of said documents in my possession, and here produce them; one seems to be a copy of the other; they very nearly resemble each other.

Ques. 6. Please state in what respects these two maps correspond, and the facts that lead you to believe the one the copy of the other.

(Objected to.)

Ans. 6. The outlines correspond, and they are so nearly alike that I think one must be a copy of the other. I examined these maps on a glass, and find they correspond one with the other very accurately; the coloring in both is very similar, and the letters have the same appearance.

(Answer objected to.)

Ques. 7. Please look at the document shown you marked "A. J." and annexed to this deposition, purporting to be extracts from an original in the office of the U. S. surveyor general, and certified by him, and state whether or not they are faithful extracts from said original documents.

Ans. 7. This is a correct extract of an index on file in the archives of this office.

Ques. 8. State what that index is.

Ans. 8. It is an index of expediente, commencing with No. 1 and continuing to No. 433. This index is certified by Manuel

Jimeno, and extends from the year 1834 to 1844. It is on loose sheets, but the numbers run regularly, from one to 433; there are 11 numbers wanting, from 329 to 340, as explained by Manuel Jimeno in his certificate attached to said document. This index gives the name of the ranch, and the party to whom the same was conceded, together with the number of the expediente.

Ques. 9. State whether or not the numbers on this index, the names of the ranchos and of the grantees, correspond with the original expedientes in the office of the surveyor general.

(Objected to.)

Ans. 9. It does, as far as I have had occasion to examine them; those noted on the document attached to my deposition I have examined, and they correspond.

Ques. 10. Look upon the document marked "B," C, "C," and state whether or not it is an accurate copy of the original, on file in the surveyor general's office.

Ans. 10. The three first pages are a copy of the petition of Juan N. Padilla, the report of Jacob P. Leese, Juan Vioget and M. G. Vallejo, and the three last pages are a copy of the title given to said Padelio of the Roblar de la Miseria.

R. C. HOPKINS.

Sworn to and subscribed before me, this 11th March, 1857.

CUTLER McALLISTER, *Com'r.*

Filed March 16th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Yndice de los terrenos adjudicados y perzonas a quienes se les ha concedido.

Las Virgenes.....	Conced'o	á José Ma. San Luis Gonzaga, Jose Ramon Estrada	1
* * * *	* *	* * * * *	*
* * * *	* *	* * * * *	*
* * * *	* *	* * * * *	*
Arroyo de San Ant'o	Concedido	á Dn. Juan Miranda.....	397
* * * *	* *	* * * * *	*
* * * *	* *	* * * * *	*
Putas.....	Conced'o	á D. Jose de Jesus Berreyesa	433
* * * *	* *	* * * * *	*
* * * *	* *	* * * * *	*

En este indice hay el numera de 433 espediente; pero pr. equivocacion se pasa en la numeracion del 329 al 340, habiendo seguida en la misma. MAN'L JIMENO.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three inclusive, exhibit true and accurate extracts from certain loose sheets on file in said archives, entitled Yndice de los terrenos adjudicados y personas á quienes se les he concedido.

In testimony whereof, I have signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 2d day of May, 1856.

[L. S.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

B.

Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana maritima de puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco. (Flourish.)

MICHELTORENA.

[Ad'a Marit'a de Mont'y.]

Sor Juez 1o Constit'nl:

Juan Ma. Padilla, vecino dest'a demarcacion ante V. como mejor allo lugar comporesco, y deja q. teniendo necesidad de occurir al gobierno departam'l con un memorial solicitando pa. pones mis bienes la el parage conocido con el nombre del Roblar de la Miseria constante de 3 or 4 sitios de ganado mallor poco mas ó menos, y colindante al este con Don M'no G. Vallejo, al norte con Don Juan Castaneda, al oueste con Don Juan Vioget, al sur con Don Bartolo Bogosquy, al tueste con Don Juan Miranda.

Sor lubista de que tengo q. ocurrir asta Monterey, con mi solicitud por solo el decreto de V. E., el s'or gen'l pa. q. informé el juez correspondiente se en efecto és ono baldio, el parage q. solisito, y yo interesado en conseguir mas por n'to la gracia de que se mi conseda el titulo, del parage q. solicitar por la distancia q. medir de haqui á Monterey. Suplico á V. so serba pedir el informé a los ser's colindantes antes d'hos, y certificamento V. pa. acompañar este documento al gobierno del depart'o. Gusando no ser de malisio, y lo nesesario, &a.

Sonoma, Noviembre 26, de 1844.

JUAN N. PADILLA.

Juzgado 1o de Sonoma.

Nov. 26*a*, 1844.

En mi consepto es conveniente de peder lo y informe los circura bacines se el terreno que se solicito el ynteresado es baldio ó no pa. declararce en todo derecho.

JACOB P. LEESE.

Los que subscribinos, y ha bayo firmamos, declaramosen toda forma q. el parage conocido con el nombre del Roblar de la Miseria es en prefecto constante de 3 ó 4 sitios de ganado mayor como lo espresa en el interesado, y que no pertenese á propriedad particular ninguna lo q. certificamos, y firmamos a pedimento del interesado ante el juez de 1a nominacion de Sonoma, a los beinte y seis dias del mes de Noviembre, de mil ochocientos cuarenta y cuatro.

J. VIOGET.

S'or Alcalde D. L. Leese:

El terreno conocido con el nombre de Roblar de la Miseria solicitado por D. Juan Padilla, colinda por el este con el de Petaluma de mi propriedad tit'a las lomitas del d'ho en esta inst'a esta baldio, y crea que no pertenece á propriedad particular corporacion ni pueblo, y crea el que suscribe que los linderos con las demas ranchos son los mismos que mencionada la precedente instancia.

Sonoma, 11 de Diciembre, de 1844.

M. G. VALLEJO.

Pio Pico, vocal decano de la Asamblea Departamental, y Gobernador provisional de las Californias.

Por cuanto Dn. Juan Nepomuseno Padilla ha pretendido para su beneficio personal y el de su famillia el terreno conocido con el nombre de Roblar de la Miseria colindante con tierra de Dn. Mariano G. Vallejo, Dn. Juan Castaneda, Don Juan Vioget, Don Bartolo Bojorguez, y Don Juan Miranda; practicadas previamente las averi-

guaciones necesarios, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido por decreto de este dia en concederle el terreno espresado, declarandolo la propriedad de él por las presentes letras, de entera conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, á reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podrá cercarlo sin perjudicar las travesias, caminos y servidumbres; lo difrutará libre y esclusivamente destinandole al uso y cultivo q. mas le acomode; pero lo tendra; pero lo tendrá ocupado con casa y bienes semocientes.

2a. Solicitará el juez respectivo le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos con las mojoneros necessarios respetando siempre el derecho legal de los colindantes.

3a. El terreno de que le *le* hace donacion es de la estencion de cuatro sitios de ganado mayor poco mas ó menos segun esplica el diseño que obra en el espediente. El juez que lo posesion lo hará medir conforme á ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valdero le tome razon de el en el libro á que corresponde y se entreque al interesado pa. su resguardo y demas fines.

Dada en la ciudad de los Angeles en este papel comun por falta del sellado á veinticinco de Noviembre de mil ochocientos cuarenta y cinco.

JOSE MA. COVARRUBIAS.

Pio Pico.

Queda tomada razon de este superior despacho en el libro respectivo f'ha ut supra.

COVARRUBIAS.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, and also the papers of the late board of land commissioners to ascertain and settle private claims in Cal., by virtue of the power vested in me by law, do hereby certify, the foregoing six preceding and hereunto annexed pages of tracing paper, numbered from one to six, inclusive, exhibit a true and accurate copy—1st, pages numbered from one to three, inclusive, exhibit a correct copy of the petition, &c., forming part of a document on file in the archives entitled Espediente promovido por Dn. Juan N. Padilla en pretencion del terreno nombrado Roblar de la Miseria, and pages numbered from four to six, inclu-

sive, exhibit a correct copy of the grant to Dn. J. N. Padilla, of the place called "Roblar de la Miseria," filed in case No. 69 on the docket of said board.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 6th day of March, 1857.

[L. S.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for a survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, or other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

Deposition of P. T. Sherreback.

THE UNITED STATES
vs.
ELLEN WHITE, Adm'x of Charles White, dec'd. } No. 346.

United States District Court, northern district of California.

SAN FRANCISCO, *March 14th,* 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Peter T. Sherreback, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, Messrs. Howard and Goold, attorneys for claimant, and U. S. district attorney.

Questions by U. S. District Attorney.

Ques. 1. Your name, age, and place of residence?

Ans. 1. Peter T. Sherreback; 47; San Francisco; I have resided in California since 1840; I was scindico under the Mexican government in 1842, '43, and '44; during the year 1843 I was hide inspector.

I was acquainted with Juan Miranda, of Sonoma county; I first got acquainted with him in the year 1841; he resided in Sonoma

county, on the Miranda ranch, as it was called at that time, on the west side of Petaluma creek. I never had any particular business with him; I have visited the ranch; Juan Miranda was living on the ranch at the time.

Ques. Did you have any conversation with him at that time in regard to this ranch and the property upon it?

(Question objected to.)

Ans. The first time I passed there I had not; the second time I passed there I went and borrowed a horse from him to go to Sonoma; I asked him if the horse was his; he said yes, and said the ranch belonged to him also.

Ques. While acting as inspector of hides, were any hides from the Miranda ranch produced before you; and if yea, with whose and what brand, if any, were they marked?

(Objected to.)

Ans. There were hides produced before *you* by Howard, Mellus & Co., of the Boston ship "Barnstable;" the hides were branded "J. M.," the Miranda sign.

I have several times borrowed horses from Miranda; they were all marked with the same brand.

(Signed) PEDRO T. SHERREBAK.

Sworn to and subscribed before me this 14 March, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Deposition of G. H. Nye.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March* 14, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Gorham H. Nye, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Messrs. Howard and Goold, att'ys for claimant, and the U. S. dist. att'y.

Questions by U. S. Dist. Att'y.

Ques. Name, age, and place of residence?

Ans. Gorham H. Nye; 52; San Francisco.

I was acquainted with Juan Miranda, of Sonoma county; I first knew him in 1838; he resided on his ranch called Miranda ranch; I traded with him.

Ques. Did you ever converse with him in regard to the ownership of that property? if yea, please state the conversation, and the circumstances attending it.

(Objected to.)

Ans. I was there on business, and as he had credit on board of my vessel I wanted to know whether he really owned the ranch; he *shew* me a document on stamped paper; who the signer was I don't recollect; I think it was General Vallego; I dealt with him afterwards in hides and tallow for some years.

Ques. State what that document was.

(Objected to.)

Ans. A title or grant to his farm, or the place where he resided; this was in 1838; I think this was the date; I was acquainted with Antonio Ortega before he went to Oregon. I think he went to Oregon in 1843.

Ques. Did you ever have any conversation with him in regard to his going to Oregon? if yea, state what it was.

(Question objected to.)

Ans. I did; he said he was going to Oregon to remain; he said he had reasons for leaving the country—family reasons; he accused his wife of inconstancy to her marriage vows, and said he was never coming back; he left his wife entirely destitute; so she told me.

(Answer objected to.)

(Signed) GORHAM H. NYE.

Sworn to and subscribed before me this 14th March, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Filed March 16th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Copy of Order dismissing the Miranda title in Land Commission.

Board of U. S. Land Com'rs.

THOS. B. VALENTINE
vs. } 45.
THE UNITED STATES.

The counsel for the claimant in this cause moves the court that the petition herein filed be withdrawn, and the cause dismissed.

BROOKS,
Att'y for Cl't.

Feb'y 16th, 1855.

"In case No. 45, Thos. B. Valentine, for the place named 'Arroyo de San Antonio,' filed the following motion, to wit: (here insert the

motion;) which having been considered, was granted, and ordered that the cause be discontinued and dismissed from the docket."

Before the Board of U. S. Land Com'rs.

THOS. B. VALENTINE, and others, vs. THE UNITED STATES. } 812.

The counsel for the claimant in this case moves the court, that the petition herein filed be withdrawn, and the cause dismissed.

BROOKS, *Att'y for Cl'm't.*

Feb'y 6, 1855.

"In case No. 812, Jas. A. Sherbe et al., for the place named 'Arroyo de San Antonio,' the counsel for the claimant filed the following motion, to wit, (here insert the motion;) which having been considered, was granted, and, &c., (as in No. 45 above.)"

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I, John C. Hays, U. S. surv. gen'l of California, and as such having in my custody the papers of the late board of land commissioners, do hereby certify the foregoing to be correct copies—

First. Of the motion to dismiss, filed in case No. 45 on the docket of said board;

Second. Of the order dismissing said cause, as found entered in rough minute-book of proceedings of commissioners;

Third. Of motion to dismiss, filed in case No. 812 on docket of said board;

Fourth. Of order dismissing same, as found entered in minute-book above mentioned.

Given under my hand and official seal at the city of San Fran-
[SEAL.] cisco, Cal., this 21st day of March, 1857.

JOHN C. HAYS,
U. S. Surv. Gen'l.

Filed March 21st, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Testimony of R. C. Hopkins.

U. S. DISTRICT COURT,
Northern District of California.

THE UNITED STATES vs. CHARLES WHITE. } No. 346.

Testimony taken in open court on the 23d March, 1857.

Present, Hon. Ogden Hoffman, judge, and the U. S. dist. attorney, and Volney E. Howard, esq., counsel for the claimant.

R. C. Hopkins, being duly sworn, deposes and says: I am clerk in the office of the surveyor general of the United States for the State of California, and the same witness who testified in this case before. I have with me the Miranda espediente, the Jimeno index, the original map and grant, filed in this case before the land commission, and referred to in my former deposition, and now produce them before the court.

The petitions for lands, and the maps thereof, are contained in the espedientes on file in the archives, and are nowhere else found.

R. C. HOPKINS.

Sworn to and subscribed in open court, this 23d day of March, A. D. 1857.

W. H. CHEVERS,
Dep'y Clerk.

Filed March 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Certified Copy of Deposition of Jos. L. Folsom.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *April 14th*, 1854.

This day personally came before Peter Lott, a commissioner appointed to take testimony to be used before the board of U. S. land commissioners, Joseph L. Folsom, a witness on behalf of the claimant in case No. 18 on the docket of said board, wherein Antonio Maria Osio is claimant, and said witness being duly sworn, on oath deposed in the English language as follows, to wit.

The U. S. law agent is present.

Questions by the Attorney for Claimant.

1st question. What is your name, age, and present residence?

Ans. My name is Joseph L. Folsom; my age 35 years; my residence San Francisco.

2d question. State whether at any time you obtained from the Spanish archives of this State, a book of record of titles from the years 1836 to 1844? If yea, when, and for what purpose; and where is that book now, or what became of it?

Answer. A few weeks before the occurrence of the May fire of 1851, a book of Spanish records was put into my hands by a staff officer of Gen'l Persifer F. Smith, of the U. S. army, then the commanding general in California, to be used as evidence in a suit then pending in the superior court of this city, being Leese & Vallejo vs. Clark.

The book was brought from Benecia, where the archives were then kept, and it formed a portion of those archives. It was used in evidence in the case referred to; was afterwards in a few days returned to me, and afterwards was destroyed by fire on the 3d of May, 1851, with nearly all the contents of my office. To the best of my recollection it contained entries as far back as the year 1837, and down as late as 1844, of synopses of grants of land, embracing names of grantees, dates, description of grants by name or in brief, &c., being a mere synopsis. The book was offered in evidence on the trial spoken of, as I suppose, as a matter of opinion, in support of some claim whereof the book bore record of some grant in which the parties were interested; *by* business was merely to identify the book as being of the archives, which I did.

I was at that time a staff officer in the U. S. army, on duty in this city, and as such the book was intrusted to me.

Cross-examined by the U. S. Law Agent.

1st question. What officer placed the book in your possession?

Answer. Capt. Frederick G. Steele, an aid-de-camp of General Smith.

2d question. Is the fact of that officer placing the book in your possession, and the information he gave you, the only means you have of knowing the book to be an authentic record?

Answer. The only personal means of knowledge; I never saw the book before.

3d question. How long was the book in your possession?

Answer. Perhaps one week—perhaps 3; I cannot tell precisely; it was in the hands of the court about ten days; it may have been some 6 weeks from the time I received it till it was destroyed.

4th question. Did you at that time understand well the Spanish language? if yea, state to what extent you examined the book.

Answer. I could then with some little difficulty read the Spanish language; but I made no examination of the book except to glance through it cursorily to find the record of the case which was in question in the court; I did that as a matter of curiosity merely, and had no interest in the case.

5th question. Describe what kind of a book it was.

Answer. It was a volume about the size of foolscap paper, say about ½ inch thick; I do not think it would have contained over 200 pages. It was bound in pasteboard covers, with either cloth or leather on the outside. It was not apparently newly bound, but seemed soiled by use; it was written on a yellowish paper, such as was in use among the Spanish people.

6th question. What other grants do you recollect, besides the one mentioned, as being entered in the book?

Answer. I do not recollect a single one. The entries were in

the form of an abstract, each entry embracing some 6 or 8 lines. I looked at it once in my office, and again in the court, with reference to the case spoken of, and made no other examination of it.

The mode in which the book was kept struck me with some force, as it was the first book of the Spanish archives I had seen.

7th question. Having examined but one case, how did you learn the points of time within which the record was embraced, as before stated by you?

Answer. It was because I was struck with the small size of the book, and in looking through it, according to my present recollection, there were entries in it running from 1837 to 1844. The book struck me as peculiar in its form and appearance as a book of record, being so different from those I had been accustomed to see. There was some writing on a fly-leaf of the book, and my impression is, that it gave some indication of what the book contained. My actual examination of the book was very cursory, and I can now only give my impressions of its contents, not feeling very positive as to the minute particulars of its contents. The grant for which the was issued in evidence on that occasion was of a date before 1840.

8th question. What was the character of the entry you examined?

Answer. It was a mere synopsis of the date, names of grantor, or officer granting, and the grantees, the name or description of the place granted, the quantity of land and its locality, &c., embracing in all perhaps 6 or 8 lines of writing.

Re-examined by Attorney for Claimant.

1st question. Do you recollect whether you was required by a subpœna or otherwise officially to produce the book before the court?

Answer. I was notified by some officer of the court—my impression is, it was the clerk of the court—when the book would be required; I do not recollect certainly how I was called upon, but I understood myself to be required officially to produce the book. The clerk said he would be responsible for its safe-keeping while in the hands of the court, and he returned it to me when they were done with it.

2d question. Where is Capt. Frederick G. Steele, of whom you have spoken?

Answer. I do not know; I think he is not in California; I believe he is somewhere in New York, and still in the army.

Cross-examined by the U. S. Law Agent.

1st question. How was the grantor described, and who was named as such in the entry which you examined?

Answer. I cannot tell now whether it gave the name or title of the grantor, and do not recollect who was the grantor.

2d question. How could you ascertain from those entries whether the grants were made by governors or alcaldes?

Answer. I do not profess to know how they were made in this particular case; I recollect there was something about it which conveyed to my mind and left the impression that the grant emanated from headquarters at Monterey, though I cannot now remember what that was. The alcalde grants I have seen have been a full record of the grant, and the entries in this book were in brief, as I have before stated. I saw no full records in this book spoken of.

3d question. Can you state the contents of the entry mentioned in relation to the grant to Leese & Vallejo, as to where the land was situated, and by whom the grant was made?

Answer. I do not remember by whom the entry represented the grant to have been made; I have before answered as to my impression upon that point. The place or situation of the land I can recollect was called or described as at the Russian landing or embarcadero, as embracing some hundreds of varas, and being on the bay shore. It was granted to Jacob P. Leese and Don Salvador Vallejo.

J. L. FOLSOM.

Subscribed and sworn to before me on this 14th day of April, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

It is hereby stipulated and agreed by and between the U. S. law agent and Volney E. Howard, esq., attorney for claimants in case No. 74, that the foregoing deposition may be considered as taken, and may be used and read in evidence in cases No. 74 and No. 11 on the docket of the commission.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I, Jno. C. Hays, U. S. surv. gen'l for California, and as such having in my custody the papers of the late board of U. S. land commissioners to ascertain and settle the private land claims in California, do hereby certify the foregoing to be a correct copy of the deposition of J. L. Folsom, on file in case No. 18 on the docket of said commissioners.

(*Endorsed:*)

No. 18. Antonio Maria Osio.—Island of Angeles.
Deposition of J. L. Folsom, taken before Com'r Peter Lott.
Filed in office April 14th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 4, p. 226.

GEO. FISHER, *Sec'y.*

Given under my hand and official seal at the city of San Francisco, Cal., this 12th day of March, 1857.
[SEAL.]

JOHN C. HAYS,
U. S. Surv. Gen'l, Cal.

Endorsed: Filed March 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

[*Here follows map—original, page* 171.]

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

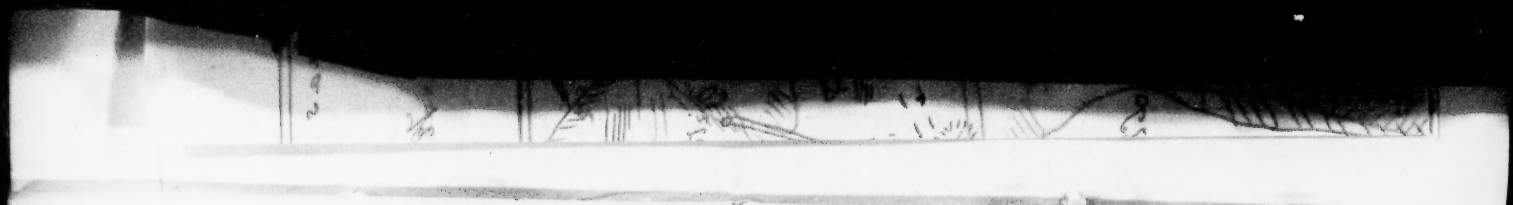
I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Mexican and Spanish territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered from one to , inclusive, exhibit a true and accurate copy of the map attached to and forming part of the expediente in the application of Juan N. Padilla for a place called "Roblar de la Miseria."

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 12th day of March, 1857.
[SEAL.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the surveyor of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, or other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general,



shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Filed March 23d, 1857.

JOHN A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Copy of original grant to M. G. Vallejo for Petaluma Ranch.

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

[Ad'a Marit'a de Mont'y. Seal.]

Manuel Micheltorena, General de Brigada de Ejercito Mexicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Ynspector del Department de Californias.

Por cuanto el Coronel D. Mariano G. Vallejo ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Petaluma colindante al S. con el Estero de Olompalie al N. y E. con el rio de Sonoma, Agua Caliente y Guilucos y al P. con las lomitas del Roblar de la Miseria; practicadas previam'te las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades q. me son conferidas á nombre de la nacion Mejicana, he venido en concederle el terreno mencionado declarandole la propriedad de el por las presentes letras sugetandose á la aprobacion de la ex'ma junta departamental y bajo las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutará libre y esclusivam'te destinandolo al uso ó cultivo que mas le acomode.

2a. Solicitará del juez respectivo que le dé la posecion juridica en virtud de este despacho por el cual se demarcarán los linderos en cuyos limites pondra demas de las mojoneras algunos arboles frutales ó silvestras de alguna utilidad.

3a. El terreno de que se han donacion es de diez sitios de ganado mayor poco mas ó menos segun esplica el diseño que corre agregado en el espediente respectivo. El juez que diere la posecion lo hara medir conformé á ordenanza quedando el sobrante que resulto á la nacion para los usos conven'tes.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y teniendose por firme y valdero se tome razon de el en el libro re-

spectivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, á veintedos de Octobre, de mil ocho cientos cuarenta y tres.

MANUEL JIMENO. MANUEL MICHEL'O.

Queda tomada razon de este despacho en el libro respectivo a f'o 1a del libro seg'do.

JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having on file in my office, and in my charge and custody, the records and papers of the late board of United States land commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three, inclusive, exhibit a true and accurate copy of part of a document on file in case No. 250 on the docket of said commissioners, endorsed—

"No. 250.—M. G. Vallejo, Petaluma.

Exhibit annexed to the deposition of José de la Rosa, taken before Com'r H. J. Thornton, (R,) June 2d, 1852.

Filed in office June 2d, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Book of Rec. of Ev., vol. xvi, pages 662 to 666.

GEO. FISHER, *Sec'y.*"

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 13th day of March, 1857.

[SEAL.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Filed March 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Translation of Grant for Petaluma Rancho to M. G. Vallejo.

Stamp First—Eight Dollars.

Provisionally authorized by the marine custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred forty-three.

(Signed) MANUEL CASTANAREZ.
(Signed) MICHELTORENA.

[L. S.]

Manuel Micheltorena, General of the Brigade of the Mexican army, Adjutant General of the staff of the same, Commanding General and Inspector of the Department of the Californias.

Whereas Colonel Dn. Mariano G. Vallejo has, for his own personal benefit and that of his family, petitioned for the land known by the name of Petaluma, bounded on the south by the estero of Olompalie, north and east by the river of Sonoma, Agua Caliente, and Grulucos, and west by the hills of the oak grove of the Miseria, the proper measures and examinations being previously made as required by laws and regulations, using the faculties conferred on me, in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent departmental junta, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as may best suit him.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this title, by whom the boundaries will be marked out, in the limits of which, besides the landmarks, he shall place some fruit or forest trees of a useful character.

3d. The land of which donation is made is ten square leagues, a little more or less, as shown by the map which goes attached to the respective espediente. The magistrate who may give possession will cause it to be measured in conformity with the ordinance, leaving to the nation for its convenient uses the surplus which may result.

4th. If he shall contravene these conditions he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that, this present serving him for a title, and being held as firm and valid, note being made of it in the proper book, and it be delivered to the person interested for his security and other purposes.

Given in Monterey, on the twenty-second of October, one thousand eight hundred and forty-three.

(Signed) MANUEL MICHELTORENA.
(Signed) MANUEL JIMENO, *Sec'y*.

Note has been made of this title in the respective book, folio 1, of book second.

(Signed) JIMENO.

Pio Pico, Governor ad interim of the Department of the Californias.

The most excellent departmental assembly, in session of this day, has decreed as follows:

Approved the grant made by the superior government of the department; *is* title issued on the 22d of October, 1843, in favor of citizen Mariano G. Vallejo, of ten square leagues, in the place known by the name of Petaluma, next to the town of Petaluma, in entire conformity with the law of August 18th, 1824, and article 5th of the regulations of November 21st, 1838; and for the security of the party, Don Mariano G. Vallejo, I thus make it known.

Given in the city of Los Angeles, on this common paper, for want of stamped, on the twenty-sixth day of September, one thousand eight hundred and forty-five.

(Signed) PIO PICO.
(Signed) JOSE MA. COVARRUBIAS, *Sec'y.*

Endorsed: Filed March 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion delivered by Honorable Judge M. H. McAllister, August 10th, 1857.

THE UNITED STATES
vs.
ELLEN E. WHITE, Adm'x.

The petition in this case was presented by Charles White to the land commissioners, and the claim was confirmed.

Upon the decease of the petitioner, Ellen E. White, as his administratrix, became the party claimant.

The claim is founded on a provisional grant to one Antonio Ortega, on the 10th of August, 1840. On the 12th June, 1840, Ortega petitioned Gov. Alvarado for the land named Arroyo de San Antonio, bounded on the south with the rancho of Camilo, on the north with the oak grove of the Miseria, on the east with the of Petaluma, and on the west with the laguna of San Antonio. On the 20th of June following, the governor referred said petition to the local authority for the necessary information, and on the 30th July, in the same year, report was made in favor of the petition; whereupon, on the 10th Aug., 1840, a grant or document was issued to Ortega for the land, bearing these words: "with the understanding that, to expedite the respective title and to regulate

the necessary documents by which he shall mark out his lines and perform those necessary acts, he shall make a map as required by law, which he will present opportunely." The above constitutes the documentary title of the claim.

To prove the genuineness of foregoing document, the testimony of Gov. Alvarado himself is adduced. This witness must have committed wilful perjury if the signatures to these documents are not genuine. He swore positively to the signature of Ortega to the petition, of that of M. G. Vallejo to the informé, and of his own to the marginal decree and the subsequent grant. M. G. Vallejo was also sworn in behalf of the claimant; he swears that the land in question was granted to Ortega by Gov. Alvarado; that said Ortega applied to witness, who was director of colonization for the northern frontier, for permission to settle on the land, which *permiss* was granted to him by witness; that Ortega subsequently, in 1840, obtained a grant from Gov. Alvarado, and the witness further swears "he has seen the grant."

In relation to this grant Alvarado further deposes, that the document marked "B. P. L.," being the petition, informé and grant, together with another document, marked "P. R. S.," being the map filed in this case, were, in 1840 or 1841, brought by Ortega to Monterey and left with witness, and kept by him for Ortega till about 1848, when he called for them, and they were returned to him by witness.

José de la Rosa deposes positively that, in 1839, he made a map of the land for Ortega, and he identifies the map filed in this case and marked "A. P. S.," as the one he made, and that subsequently, in 1840, Ortega got the grant for the land.

This witness may have been, and from the other testimony in the case it is probable is, mistaken in the year; but he swears to having made a map, and that he saw the grant a short time after the petition had been presented in the house of Ortega on the ranch.

Wm. A. Richardson, another witness, deposes to the fact that a grant was made *to* the land to Ortega in 1840.

Now these witnesses, Alvarado, Vallejo, Rosa and Richardson, have all sworn falsely, if it is conceded by the government that the grant of Alvarado was forged or ante-dated.

The evidence on which the allegation of forgery rests, is:

First. The fact that the address on the petition is in a different colored ink from the body of the petition, and that the date of the marginal decree had been altered from 1841 to 1840.

It is true that the name of the grantee was left blank, by mistake or omission, and filled in with different colored ink, but the petition was signed by Ortega, and the color of the ink with which the filling up is made corresponds with that used in the body of the grant. The alteration of the date, the deed taking effect from

its delivery, would have no material influence in this case. There could be no motive to change the date, for Alvarado was governor during both the years 1840 and 1841; and, lastly, the alteration of the date is with the same colored ink with which the body of the grant is written.

Second. The second item of testimony relied on to establish a forgery in the grant to Ortega in 1840, is the allegation that, in 1844, a grant was issued to one Juan Miranda by Gov. Micheltorena, for the same land. But it must be borne in mind, that the original grant to Miranda has never been produced, nor has any testimony been adduced to prove it has ever existed. The archives disclose the existence of a petition from Miranda, a report from the local authority in its favor, and an unsigned grant.

There is no doubt that an attempt was made by Miranda to obtain a grant for this land. Not much reliance is to be placed upon the fact that the copy grant in this expediente was unsigned. Many instances of similar cases . But in this case one of the witnesses, "De la Rosa, a witness for claimant, swears that Miranda applied to him in 1844 to draw up a petition; that he did so for Miranda; that witness, at request of Miranda, presented the petition to the governor, who postponed making the grant, and that the same never was signed, on account of the civil disturbances and the breaking out of the revolution about that time."

The testimony of this witness is to be received cum grano salis. It is contradicted in several instances, and his own testimony represents himself as the willing agent of Miranda to defraud Ortega out of his rights, out of his grant of 1840, and which was known at the time to him, if other portions of his testimony are to be believed. But he seems to be confirmed in this particular instance by the testimony of one of the witnesses for the government, Francisca Miranda, the daughter of Juan Miranda, who says, "My father went to Monterey for the purpose of obtaining a title from the general government, but, in consequence of being taken sick, he was unable to attend to it, and came away, leaving the papers in the hands of Salvador Vallejo; that Salvador Vallejo said he had sent the title to that ranch by Don Manuel Vaca, but the title never was received by my father." And at this point, it is to be borne in mind that the original grant to Miranda never has been produced, nor has any witness been produced who says he ever saw it.

If the grant never had issued or been delivered to Miranda, no rights under it accrued to him; but whether the grant was signed and delivered or not, is not very material, for if a genuine grant had been issued for the land in 1840, and no forfeiture under the Mexican law had been operated, the issue of a junior grant for the same land could not divest the rights of the elder grantee.

This is clearly the principles of the Mexican law, and distinctly affirmed by the testimony of witnesses in this case.

But the fact that a subsequent grant for land previously granted is evidence to some extent to be considered when investigating the genuineness of the prior grant.

The weight to be attached to this testimony will be ascertained by reference to the testimony of Jacob Leese, who stated he was alcalde of Sonoma in 1844 or 1845, when Juan Miranda applied to witness with the customary petition for the land which witness understood to be vacant; this understanding the witness swears rested entirely on the allegation in the petition of Miranda, and the fact that he (Miranda) was in the actual possession of the premises. In answer to the question whether he would have represented the land to be vacant if he had known that Miranda occupied the land for another person, he replied, "of course I should not;" I should await an investigation until it was ascertained.

This witness further states that he knew nothing of the Ortega grant at that time, and that his report was founded on the actual occupation of the land and the suggestion in the petition of Miranda. This testimony ascertains that the report that the land was vacant was made without reference, and in ignorance of a prior grant, and based exclusively on the act and allegation of Miranda. It does not touch the question of forgery.

The last item of evidence relied on to sustain the allegation of forgery is certain parol testimony.

Gorham H. Nye, a witness for the gov't, swears he had a conversation with Miranda, in which the latter claimed the ranch as his own, and showed his title to witness; this he swears was in 1838, and the title bore date in the same year; Miranda's title is dated some eight years afterwards.

Another witness, José Ramon Me'a, states he was raised by Miranda, and swears to occupancy by him, and that he was owner, and also proves that the cattle on the ranch were Miranda's.

Francisa Miranda, the wife of Ortega, was also a witness of the government, and she swears that her husband never had any claim to the ranch. In relation to this witness it is proper to observe that a separation between her husband and herself had taten place, and continued up to the time of her giving her testimony. If that testimony is to be believed, all the witnesses for claimants have foresworn themselves. But having been deeply injured by her husband, or having believed herself to have been so, her testimony is characterized by the spirit of a woman who believes herself deeply wronged.

José S. Berreyesa, another witness for claimant, states he knew the ranch from 1837 to 1849, during which time it was claimed and occupied by Miranda. The next witness for the government is John Martin. He states he was in occupation of the ranch from

1832 to 1837, under a writing from Gen'l Vittoria, which amounted to a loan of the land; but he destroyed this writing in 1837, when he moved from thence to another ranch, for which he got a title. The witness states he burned the paper, *so that Miranda*, and that Miranda went into possession. He further states he delivered possession to Miranda before the marriage of Ortega to Miranda's daughter.

The last witness for the gov't, who speaks to the point, is Joel P. Walker, who states a conversation he had with Ortega, which took place in Oregon, wherein Ortega said he had spoken to the authorities in California about a piece of land; had not gotten any papers for it, but thought he could get them on his return to California. This witness further testifies to a conversation with Ortega after the return of both to California, in which Ortega said he had gotten his papers for his land; that Ortega showed the papers to witness; that there were two papers; one was his petition asking for his land and a grant for the same, and the other paper was a map, to which there was no name. The documents filed in this case were exhibited to witness, and he swears they were not those exhibited to him in 1848, after their return to Cal'a. As to document containing the petition and grant, and which was exhibited to him in 1848, he states that he did not see the name of Alvarado in more than one place; it was in the first page, in the lower right-hand corner. As to the map, he states it was nothing like the map shown to him when he gave his testimony.

On his cross-examination the witness states, "he will not say he can read it, (Spanish,) for he is not a Spanish scholar;" and again, "I looked over the grant, but neither read nor endeavored to read it, as I have said Ortega read it to me. I saw the words dos sitios in it, and a good many words I did not understand; it was badly written. Ortega read it in Spanish; it was written in Spanish, and Ortega could not speak English. In his answer 22 he states he refused a donation of part of the land because he thought the papers were ante-dated, though I gave, says he, no reason to Ortega for objecting to the donation. Now this thought of the papers being ante-dated must have applied to the papers shown to the witness in 1848, which he swears are not the same papers on file in this case.

The testimony of certain witnesses was introduced by claimants to impeach the testimony of this witness, Walker. I do not deem it necessary to prosecute the issue raised as to the credibility of this witness. The kind of examination (and the only kind he was able to give, from his meagre knowledge of the Spanish, to the papers in 1848) does not enable the court to rely on his testimony in relation to the identity of these papers; nor does the fact that the one set of papers, if the thought of their being ante-dated be correct, fix suspicion upon the papers on file; they never were seen by the witness,

as he states in his 12th answer, until the day of his examination as a witness. If, on the other hand, the papers on file were the identical papers shown to the witness in 1848, what reliance is to be placed on his testimony? This witness testifies that Ortega, in his conversation with him in Oregon, stated that he had spoken to the authorities in Cal'a about a piece of land; that he had not gotten any papers for it, but thought he could get them on his return. Now, conversations and verbal statements so easily colored by misapprehensions, and entirely changed in their character by the omission, addition, or substitution of a word, is a species of testimony not to be relied on. If Alvarado, Vallejo, Richardson, and De Rosa, can be believed, Ortega had intercourse with the Mexican authorities about a piece of land, and although he had received no title, had the right, from what had taken place, to suppose he could get his title founded on the papers he had left in Alvarado's hands. A misapprehension of the language of Ortega, who could not speak English, by the witness, Walker, might have led the latter to the conclusion at which he came. We cannot consider the parol testimony sufficient to counterbalance the positive testimony in behalf of the genuineness of the Ortega grant. As to the Miranda grant it can have no influence injurious to claimant on this point if their grant has been proved. And, lastly, in this case there is proof that the prosecution of the Miranda claim before the commissioners has been voluntarily abandoned. It is suggested in the brief of the attorney for the Government that such abandonment was the result of fraud and collusion; this suggestion may be true, but to affect the action of this court some evidence of the fraud must be given; none such is found in the transcript.

In discussing the genuineness of the grant to Ortega, we have laid aside the testimony of Ortega, as objection was made to his admissibility; and finding it unnecessary to use his testimony, we leave the question as to his competency open. Assuming the genuineness of the Ortega grant, the question is, whether the equitable rights (for the grant did not convey a title) of the grantee have been forfeited either by the Mexican authorities or by the acts of the grantee. There was no denouncement of the land in this case; the only act of the Mexican government was (admitting the execution of the Miranda grant) the issuing of a second grant for the same land.

Juan B. Alvarado, a witness in this case, who has held various offices under the Mexican government, and that of governor and political chief from 1837 to 1842, states *states* that after a grant had issued, and grantee had gone into possession, a second grant could have no effect. In all cases the eldest title had the preference, unless there was a denouncement, in which the case would be tried, &c.

Jacob Leese, who in his official capacity as a Mexican functionary

made the official report in favor of the Miranda claim, states that in the above stated case "the alcalde would have reported that the land was not vacant, and that would have been his report in the case before us, (the Miranda claim;) but the fact of the former grant being concealed or contradicted by the petition, I was deceived, and if the grant was obtained from the governor through the deception practised upon the alcalde, that grant would be fraudulently obtained and would be void."

It will be observed that the testimony of foregoing witnesses was in response to questions which not only supposed the issuing of a prior grant, but the additional fact that the grantee had taken possession. The response was confined to the question propounded. But we are by no means clear that the rights of a grantee could in any case, until a notorious abandonment, be forfeited in favor of a junior grantee by a simple grant without a previous denouncement by the junior grantee.

It will be unnecessary to decide this point, as, in the view of the evidence the court has taken of this case, it is covered by the law, as proven by the foregoing two witnesses. If, then, the rights of claimants are not be deemed to have been forfeited by the act of the Mexican government, the inquiry is, have they been by the act of the party? This is affirmed by the government on two grounds: first, the deposit of the papers by Ortega with Alvarado in 1840 or 1841; second, the removal of Ortega from California to Oregon, and his absence for some four years from California.

It is urged that the deposit of the papers by Ortega was, in fact, a surrender of his rights. To sustain this proposition, reliance is placed upon the case of Boisner v. Metayre, 5 Martin, 667, 678. In that case, a tract of land which had been in possession of defendant for a number of years was claimed by p'ffs. The title relied on by latter was an order of survey in 1789, and a confirmation by act of Congress in 1815. The adverse party relied on a survey obtained in 1795, and confirmed by the commissioners U. S. in 1812. The concession of the land in 1759 had a condition annexed to it as to the improvement of the land before the expiration of three years, and, on failure so to do, the grant was to be null. It was established by the testimony that the grantee had gone on the land temporarily, cut several acres of cane, and opened the road in front; that he never settled the land, and that at some time between the years 1785 and 1795 he surrendered his title into the hands of the commandant of Natchitoches, among the papers of whose office it was lodged in a bundle entitled "Requestes de concessions de terres au domaine," where it remained until the archives of that office were delivered to the person who received possession of that place for the U. S. Now, in that case there was no dispute about the intention of the grantee to surrender, and of the government to accept; but the ground taken was, that nothing

short of a written declaration from the grantee that it was his intention to abandon the land could do away with the grant. The court decreed that the evidence was sufficient, and also that at the expiration of the time fixed by the grantor for the accomplishment of the conditions, upon failure thereof the grantor had the right to consider the grant null by virtue of the reservation made to that effect in the grant itself.

The case at bar is different. The Mexican grant did not contain a reservation vacating a grant on failure of conditions, but merely subjected the land granted to denouncement by another. In the case relied on there was a formal surrender to the authorities, and such surrender was accepted and filed among the documents which evidenced the cases in which surrenders had been made, and which passed with the archives to the U. S.

No one of these facts exists in the case at bar, and their existence is disaffirmed by the testimony. The attention of the witness Alvarado was called to the petition, informe, grant and map, and he was asked whether they were ever placed in his hands for safe-keeping? He replied that in 1840 or 1841 they had been brought to Monterey by Ortega and left in his hands, and that he kept them for Ortega until 1848, when, at request of latter, he gave them to him to be used for some purpose. Nothing is drawn out in the cross-examination, nor even an attempt made to add to or vary this testimony. The government was represented, and if there had been any intention to treat the leaving of the papers by Ortega with Alvarado as a surrender of the former's right, it is reasonable to suppose that if any explanation could have been obtained, some effort would have been made with a view to change the character of the transaction. And here it is proper to observe, that if any cross-examination could have elicited anything to change the transaction, no censure, if any can be imputed for omitting to cross-examine, can be charged on the able counsel who represent the appellant, as they were not engaged professionally when the examination took place.

Alvarado swears the papers were deposited with him for safe-keeping; that he kept them for Ortega, and when called for they were returned to him. In the absence of contradictory testimony, we cannot consider this deposit of papers evidence of a surrender of his rights by Ortega; a fact which, if not to be exclusively ascertained by written testimony, should always be established by clear and reliable proof.

The second ground taken by the government is the removal of Ortega from California, and his absence for four years. It is contended, first, that such removal to a foreign country constituted an abandonment, rendered the land granted vacant, and justified the

made the official report in favor of the Miranda claim, states that in the above stated case "the alcalde would have reported that the land was not vacant, and that would have been his report in the case before us, (the Miranda claim;) but the fact of the former grant being concealed or contradicted by the petition, I was deceived, and if the grant was obtained from the governor through the deception practised upon the alcalde, that grant would be fraudulently obtained and would be void."

It will be observed that the testimony of foregoing witnesses was in response to questions which not only supposed the issuing of a prior grant, but the additional fact that the grantee had taken possession. The response was confined to the question propounded. But we are by no means clear that the rights of a grantee could in any case, until a notorious abandonment, be forfeited in favor of a junior grantee by a simple grant without a previous denouncement by the junior grantee.

It will be unnecessary to decide this point, as, in the view of the evidence the court has taken of this case, it is covered by the law, as proven by the foregoing two witnesses. If, then, the rights of claimants are not be deemed to have been forfeited by the act of the Mexican government, the inquiry is, have they been by the act of the party? This is affirmed by the government on two grounds: first, the deposit of the papers by Ortega with Alvarado in 1840 or 1841; second, the removal of Ortega from California to Oregon, and his absence for some four years from California.

It is urged that the deposit of the papers by Ortega was, in fact, a surrender of his rights. To sustain this proposition, reliance is placed upon the case of Boisner v. Metayre, 5 Martin, 667, 678. In that case, a tract of land which had been in possession of defendant for a number of years was claimed by p'ffs. The title relied on by latter was an order of survey in 1789, and a confirmation by act of Congress in 1815. The adverse party relied on a survey obtained in 1795, and confirmed by the commissioners U. S. in 1812. The concession of the land in 1759 had a condition annexed to it as to the improvement of the land before the expiration of three years, and, on failure so to do, the grant was to be null. It was established by the testimony that the grantee had gone on the land temporarily, cut several acres of cane, and opened the road in front; that he never settled the land, and that at some time between the years 1785 and 1795 he surrendered his title into the hands of the commandant of Natchitoches, among the papers of whose office it was lodged in a bundle entitled "Requestes de concessions de terres au domaine," where it remained until the archives of that office were delivered to the person who received possession of that place for the U. S. Now, in that case there was no dispute about the intention of the grantee to surrender, and of the government to accept; but the ground taken was, that nothing

short of a written declaration from the grantee that it was his intention to abandon the land could do away with the grant. The court decreed that the evidence was sufficient, and also that at the expiration of the time fixed by the grantor for the accomplishment of the conditions, upon failure thereof the grantor had the right to consider the grant null by virtue of the reservation made to that effect in the grant itself.

The case at bar is different. The Mexican grant did not contain a reservation vacating a grant on failure of conditions, but merely subjected the land granted to denouncement by another. In the case relied on there was a formal surrender to the authorities, and such surrender was accepted and filed among the documents which evidenced the cases in which surrenders had been made, and which passed with the archives to the U. S.

No one of these facts exists in the case at bar, and their existence is disaffirmed by the testimony. The attention of the witness Alvarado was called to the petition, informe, grant and map, and he was asked whether they were ever placed in his hands for safe-keeping? He replied that in 1840 or 1841 they had been brought to Monterey by Ortega and left in his hands, and that he kept them for Ortega until 1848, when, at request of latter, he gave them to him to be used for some purpose. Nothing is drawn out in the cross-examination, nor even an attempt made to add to or vary this testimony. The government was represented, and if there had been any intention to treat the leaving of the papers by Ortega with Alvarado as a surrender of the former's right, it is reasonable to suppose that if any explanation could have been obtained, some effort would have been made with a view to change the character of the transaction. And here it is proper to observe, that if any cross-examination could have elicited anything to change the transaction, no censure, if any can be imputed for omitting to cross-examine, can be charged on the able counsel who represent the appellant, as they were not engaged professionally when the examination took place.

Alvarado swears the papers were deposited with him for safe-keeping; that he kept them for Ortega, and when called for they were returned to him. In the absence of contradictory testimony, we cannot consider this deposit of papers evidence of a surrender of his rights by Ortega; a fact which, if not to be exclusively ascertained by written testimony, should always be established by clear and reliable proof.

The second ground taken by the government is the removal of Ortega from California, and his absence for four years. It is contended, first, that such removal to a foreign country constituted an abandonment, rendered the land granted vacant, and justified the

second grant. To sustain this proposition, the case of Helliman vs. Peeples, 1 Texas, 673, and other cases from the State of Texas, have been cited. The reply to these is, that they apply to foreign colonists, and were made under the colonization laws of Coahuila and Texas, and particularly under the 30 article of the colonization law of the State of Coahuila and Texas of March 24, 1825, which applies exclusively to the new settler or colonist, and declares that lands held by such persons, who shall establish themselves in a foreign country, shall become entirely vacant.

But the facts, so far as the court has been able to elicit them, do not establish a change of residence by the grantee, Ortega, and this brings us to the consideration whether the removal of Ortega was evidence of an actual abandonment of his rights of property.

As to the circumstances attending that removal, there is very conflicting testimony, and of a character so diverse that it is difficult to reconcile it. Our duty, therefore, is to try, amid the mass of opposing oaths, to get at the truth.

One fact is admitted—that Ortega was absent intermediate the date of his grant and the year 1848, during which time he was in Oregon.

As to the facts of this absence, we will first look to the testimony relied on by the government to prove an abandonment. One of their witnesses, John Martin, swears, he knows the ranch known as the Arroyo de San Antonio; that he had possession of it in 1832 from Gen. Vittoria; but that the writing he had was for the loan of the land, and that he delivered the paper to Juan Miranda, in order for him to get a title from the government. This he states in answer to the 3d question.

In reply to a subsequent question, "What became of the papers that you had from Vittoria?" he replied, "I burned them; they did not belong to any record." It was in 1837 that I burned them; I did so that Miranda might get his title to the land clear from any other claim to it.

He further states, that he left the ranch in 1837, and that Miranda had permission to take possession of the land from witness, from Gen'l Vallejo, commandant on the frontier, until he could get a grant from the government.

This witness deposes that Miranda cultivated and took possession of the ranch by placing one of his sons on it, who cultivated the lands, kept cattle there, and built a house of sticks in which he lived.

In conclusion, he states that Miranda never lived on the ranch, but his son occupied it; he was the only one who lived constantly there; the father, Miranda, made occasional visits to the rancho.

It is to be observed, that it was in 1837 he delivered to Miranda, or, in accordance with his subsequent answer, destroyed the papers he held, to enable Miranda to obtain a title. Now, it is certain, so

far as the evidence goes, that no attempt was made by Miranda to get a title until near seven years thereafter.

Again he swears that Miranda obtained a permission from Gen'l Vallejo to take possession of the land. Now we have the testimony of Vallejo himself, whose version of the transaction will be given hereafter.

Joel P. Walker is another witness for the government. We have heretofore referred to that portion of his testimony relied on to establish the forgery or antedating of the Ortega grant. In another portion of his testimony, this witness states that when in Oregon, the condition of Ortega was poor. Witness gave him blankets, took care of him, fed, clothed, and sheltered him; and he proceeds to state, "I also started him home to California on or about the fall of 1845, but he was wrecked and returned to me almost naked, and after that I kept him until the winter of 1846 or the spring of 1847, when I started him home again."

Now this testimony, coming as it does from the government, so far from fixing a change of residence on Ortega, exhibits the fact that poverty and shipwreck intervened to keep him from California, which the witness seems to have considered his, Ortega's, home.

José Ramon Meza is the next witness for the government. He is one who was married in Miranda's family. This witness swears that Miranda occupied the ranch—claimed it as his own for 19 or 20 years. During this time, cattle were put upon it, a house built upon it; and he states the fact stated by the witness Martin, that possession of the land was obtained by Miranda with the consent of Mariana G. Vallejo. Upon this point he says, I know that Miranda first occupied the rancho by the provisional consent of M. G. Vallejo, for the purpose of afterwards applying to the Mexican government for a title to it, and he concludes by stating that this is the only way by which he knew the ranch belonged to Miranda. A third witness, José S. Berreyesa, deposes to the occupation of Miranda, and states that he considered him as occupying it in his own right.

Peter T. Sherrebak, another witness, testifies that Miranda was living on the ranch in 1842, and the hides sold by him were branded with the initials Miranda's name. This witness, together with another, Gorham H. Nye, testifies to connections had with Miranda, in which the latter said he was the owner of the ranch.

One of these witnesses, Nye, states that Miranda exhibited a document as evidence of title which he thinks was signed by Gen. Vallejo; this, of course, cannot be the title on which the claim of Miranda is based, for that is signed by Micheltorena.

The last witness to which we shall advert is Francisca Miranda. Prior to doing so it will be well to turn to a statement made by Gorham H. Nye. It was brought out on the examination, this

second grant. To sustain this proposition, the case of Helliman vs. Peeples, 1 Texas, 673, and other cases from the State of Texas, have been cited. The reply to these is, that they apply to foreign colonists, and were made under the colonization laws of Coahuila and Texas, and particularly under the 30 article of the colonization law of the State of Coahuila and Texas of March 24, 1825, which applies exclusively to the new settler or colonist, and declares that lands held by such persons, who shall establish themselves in a foreign country, shall become entirely vacant.

But the facts, so far as the court has been able to elicit them, do not establish a change of residence by the grantee, Ortega, and this brings us to the consideration whether the removal of Ortega was evidence of an actual abandonment of his rights of property.

As to the circumstances attending that removal, there is very conflicting testimony, and of a character so diverse that it is difficult to reconcile it. Our duty, therefore, is to try, amid the mass of opposing oaths, to get at the truth.

One fact is admitted—that Ortega was absent intermediate the date of his grant and the year 1848, during which time he was in Oregon.

As to the facts of this absence, we will first look to the testimony relied on by the government to prove an abandonment. One of their witnesses, John Martin, swears, he knows the ranch known as the Arroyo de San Antonio; that he had possession of it in 1832 from Gen. Vittoria; but that the writing he had was for the loan of the land, and that he delivered the paper to Juan Miranda, in order for him to get a title from the government. This he states in answer to the 3d question.

In reply to a subsequent question, "What became of the papers that you had from Vittoria?" he replied, "I burned them; they did not belong to any record." It was in 1837 that I burned them; I did so that Miranda might get his title to the land clear from any other claim to it.

He further states, that he left the ranch in 1837, and that Miranda had permission to take possession of the land from witness, from Gen'l Vallejo, commandant on the frontier, until he could get a grant from the government.

This witness deposes that Miranda cultivated and took possession of the ranch by placing one of his sons on it, who cultivated the lands, kept cattle there, and built a house of sticks in which he lived.

In conclusion, he states that Miranda never lived on the ranch, but his son occupied it; he was the only one who lived constantly there; the father, Miranda, made occasional visits to the rancho.

It is to be observed, that it was in 1837 he delivered to Miranda, or, in accordance with his subsequent answer, destroyed the papers he held, to enable Miranda to obtain a title. Now, it is certain, so

far as the evidence goes, that no attempt was made by Miranda to get a title until near seven years thereafter.

Again he swears that Miranda obtained a permission from Gen'l Vallejo to take possession of the land. Now we have the testimony of Vallejo himself, whose version of the transaction will be given hereafter.

Joel P. Walker is another witness for the government. We have heretofore referred to that portion of his testimony relied on to establish the forgery or antedating of the Ortega grant. In another portion of his testimony, this witness states that when in Oregon, the condition of Ortega was poor. Witness gave him blankets, took care of him, fed, clothed, and sheltered him; and he proceeds to state, "I also started him home to California on or about the fall of 1845, but he was wrecked and returned to me almost naked, and after that I kept him until the winter of 1846 or the spring of 1847, when I started him home again."

Now this testimony, coming as it does from the government, so far from fixing a change of residence on Ortega, exhibits the fact that poverty and shipwreck intervened to keep him from California, which the witness seems to have considered his, Ortega's, home.

José Ramon Meza is the next witness for the government. He is one who was married in Miranda's family. This witness swears that Miranda occupied the ranch—claimed it as his own for 19 or 20 years. During this time, cattle were put upon it, a house built upon it; and he states the fact stated by the witness Martin, that possession of the land was obtained by Miranda with the consent of Mariana G. Vallejo. Upon this point he says, I know that Miranda first occupied the rancho by the provisional consent of M. G. Vallejo, for the purpose of afterwards applying to the Mexican government for a title to it, and he concludes by stating that this is the only way by which he knew the ranch belonged to Miranda. A third witness, José S. Berreyesa, deposes to the occupation of Miranda, and states that he considered him as occupying it in his own right.

Peter T. Sherrebak, another witness, testifies that Miranda was living on the ranch in 1842, and the hides sold by him were branded with the initials Miranda's name. This witness, together with another, Gorham H. Nye, testifies to connections had with Miranda, in which the latter said he was the owner of the ranch.

One of these witnesses, Nye, states that Miranda exhibited a document as evidence of title which he thinks was signed by Gen. Vallejo; this, of course, cannot be the title on which the claim of Miranda is based, for that is signed by Micheltorena.

The last witness to which we shall advert is Francisca Miranda. Prior to doing so it will be well to turn to a statement made by Gorham H. Nye. It was brought out on the examination, this

witness not having been cross-examined. The statement is, that Ortega stated to witness that he, Ortega, was going to Oregon to remain; he said he had family reasons for leaving the country; he accused his wife of inconstancy to her marriage vows, and said he was never coming back. This is the only declaration of Ortega testified to on this point; and considering the circumstances under which it is made, we cannot, in view of the other facts in the case, regard it as fixing on Ortega a change domicil, and under no circumstances can it be regarded as proof of an abandonment of his rights under his grant.

Francisca Miranda is the last of the government witnesses to whom we shall refer. This witness was the wife of Ortega, and she distinctly and positively swears that her husband never pretended to any claim whavever to the ranch, and she also swears that Miranda failed to obtain his right to the ranch from Vallejo. We have heretofore commented on the testimony of this witness. There had been a separation between herself and husband. She accused him of desertion, he accused her of infidelity; she lived with father Miranda; protected by him, abandoned by her husband, her testimony is calculated to excite distrust, breathing the spirit of hostility it does. It seems by her testimony, after the desertion of her husband, she became the mother of three children. This testimony was objected to, but when the motives which governed a party in removing or which might operate to prolong his absence are the subject-matter of inquiry, we concede the testimony admissible.

The proposition sought to be sustained by the government is, that Ortega had removed his domicil from California, or that he had at least abandoned all his rights of property there. Testimony which goes to establish what were the motives of his departure, and which tends to show good reasons arising out of the cause of his departure for continued absence, we deem admissible.

We believe we have referred to all the testimony on which reliance is placed by the government to establish an abandonment. They rely upon the actual absence of the grantee and the foregoing parol testimony. We turn to the testimony of the claimants on this point, excluding that of Ortega.

Wm. A. Richardson swears that he knows the ranch; that it was occupied by the family of Miranda, by virtue of a contract between Ortega and Miranda; that shortly all the family of Miranda left, leaving his son Theodore to occupy it; Miranda went to the ranch about two months after Ortega got the grant, and finally he swears Miranda took possession at the request and for the benefit of Ortega.

Mariana G. Vallejo is the next witness, and the one referred to by the claimant's witnesses, Martin, Mesa, Nye, and Francisca Miranda, as the person by whose permission Miranda took posses-

sion of the ranch. Now, Gen. Vallejo swears that Ortega applied to witness, as director of colonization, and that to Ortega witness gave the permission, immediately after which Ortega went into possession, taking with him his father-in-law, Juan Miranda, and his family. He states that Ortega built a house and a corral, and stocked it with cattle, furnished by witness; that when Ortega placed his father-in-law in possession, he (Ortega) was an officer in the army, and was a portion of his time in the army and occasionally to his ranch. A short time after getting permission from witness to occupy the land he says Ortega got his grant.

De la Rosa swears Ortega in 1839 obtained permission from Vallejo, and did occupy the land. He further swears, that when Ortega went to Oregon he left his family and Juan Miranda the land claimed, in order that Ortega might not lose his right to the land. Finally, he swears he understood, both from Ortega and Miranda, that the latter occupied the land for the former; they both told witness so. This witness confirms the testimony of Vallejo. Did it stand alone, the contradictions in his testimony would render it unsafe to rely on.

It is the duty of the court to reconcile the contradictions of testimony as far as practicable. The two facts, to which the conflicting testimony applies in this case, are—

First. As to the fact, whether Ortega or Miranda obtained the permission of Vallejo to take possession of the land.

Second. Who did, in fact, take possession in the eye of the law.

Martin, Mesa, Nye, and Francisca Miranda state that Miranda obtained permission; but it is to be observed that no one of them, save Nye, makes anything but a general statement, that the possession was obtained by Miranda.

Gorham H. Nye does state that Miranda exhibited to him a document; "who the signer was I do not recollect; I think it was Gen. Vallejo." Now the belief of three of these witnesses—that Miranda had got the permission from Vallejo—may have been honest, and founded upon the fact that Miranda went into actual possession after the grant to Ortega, and from the additional fact, that during the absence of Ortega he did attempt, nay, perhaps succeeded in getting a grant for the land in his own name, and the same circumstances may have led them to believe that Miranda went into possession claiming for himself. These witnesses may have been honest in the expression of their belief; still such belief cannot be correct, unless we attribute wilful perjury to both Gen'l Vallejo and de la Rosa.

An actual possession of the land by the father-in-law, Miranda, a portion of his family, is not irreconcilable with the fact positively sworn to by the witnesses for the claimant. But we think the witnesses' testimony favor the theory of the case which fixes the occupation of Miranda's family as that of the absent son-in-law.

Ortega had obtained, by a petition in his own name, a grant in his own name; he had, if Gen. Alvarado and de la Rosa, or either of them, is to be believed, obtained a survey of the land; had a map made. Being at enmity with his wife and her family, he did not give to them, or either of them, the muniments of his title, but deposited them with Alvarado on his departure for Oregon. That he had not abandoned his country, or his rights of property, is evidenced from the fact that he made an attempt, which was foiled by shipwreck, to return, and did actually return home, as testified to by Walker, one of the claimant's witnesses.

Finally, we cannot close our eyes to the abandonment of all claims by those who preferred a claim in behalf of Miranda. The transcript shows that an order, upon motion of claimant's counsel, was entered before the land commissioners dismissing that claim. It is suggested that this was done by collusion and fraud. There is no evidence of it before us. In the absence of such, it certainly was the duty of those now attempt to sustain the Miranda claim to have offered stronger proof of its existence than is to be found in this case.

"The occupation and cultivation by Miranda (say the commissioners in this case) must be considered as the acts of Ortega, under whose authority they were performed. They thus complete a full compliance with the conditions of the grant, and establish his equitable right to a confirmation."

Coinciding in these views, a decree affirming the decision of the board must be entered.

Decree.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellant,
vs.
ELLEN E. WHITE, administratrix of Charles White, deceased, Appellee. } No. 346.

Stated term, August 17th, 1857.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision

was founded, and it appearing to the court that the said transcript has been duly filed according to law, and additional testimony having been taken, and the counsel for the respective parties having been heard—

It is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed.

And it is likewise further ordered, adjudged, and decreed, that the claim of the appellee is a good and valid claim, and the same is hereby confirmed.

The land of which confirmation is made is situated in the county of Sonoma, State of California, and is known by the name of Arroyo de San Antonio, being the same which was granted by Governor Juan B. Alvarado to Antonio Ortega on August 10th, 1840, and is bounded as follows: on the south by the rancho Carnillio; on the north by the Roblar de la Miseria; on the east by the Estero de Petaluma; and on the west by the Laguna de San Antonio, containing about four square leagues; for a more particular description reference to be had to the original expediente and map filed among the papers in the case.

(Signed) M. HALL McALLISTER, *Judge.*

August 17th, 1857.

Endorsed: Filed August 17th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 30th day of September, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, deceased.

In this case, on application of P. Della Torre, esq., U. S. attorney, made in open court, it is ordered by the court that an appeal on behalf of the United States from the final decision of this court rendered in said cause at the present term be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed September 30th, 1857.

JOHN A. MONROE, *Clerk.*